

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

FILED

Sep 17, 2024

4:00 pm

U.S. EPA REGION 5
HEARING CLERK

In the Matter of:)	Docket No. CAA-05-2024-0038
)	
Marathon Petroleum Company LP)	Proceeding to Assess a Civil Penalty
Canton, Ohio,)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Marathon Petroleum Company LP, a corporation doing business in Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Each state must submit to the Administrator of EPA a plan for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the CAA, 42 U.S.C. § 7410. These plans are referred to as State Implementation Plans (SIPs).

10. On January 22, 2003, EPA approved Ohio's construction permit program for Prevention of Significant Deterioration in attainment areas, Ohio Administrative Code (OAC) Chapter 3745-31, as part of Ohio's federally enforceable SIP. See 68 Fed. Reg. 2909 (Jan. 22, 2003).

11. OAC Rule 3745-31-02(A) provides that no person shall cause, permit, or allow the installation or modification of any new source that is, or will be, part of a facility, as defined in OAC Chapter 3745-77, and that is required to obtain a Title V permit under OAC Chapter 3745-77, without first obtaining a permit-to-install from the director, except as provided by the rule.

12. OAC Rule 3745-31-05(A)(3) states that the director of the Ohio Environmental Protection Agency (OEPA) shall issue a permit-to-install on the basis of the information appearing in the application, or information gathered by or furnished to OEPA, or both, if the director determines that the installation, modification, or operation of the air contaminant source will, among other things, employ best available technology (BAT). BAT shall be evaluated, determined, and required in the initial

permit-to-install issued for an air contaminant source or when a modification of the air contaminant source results in the issuance of a permit-to-install, except as provided by the rule.

13. OAC Rule 3745-31-01 defines BAT as any combination of work practices, raw material specifications, throughput limitations, source design characteristics, an evaluation of the annualized cost per ton of air pollutant removed, and air pollution control devices that have been previously demonstrated to OEPA to operate satisfactorily in Ohio or other states with similar air quality on substantially similar air pollution sources.

14. Under Section 111 of the CAA, 42 U.S.C. § 7411, EPA promulgated the Standards of Performance for New Stationary Sources (NSPS) General Provisions at 40 C.F.R. §§ 60.1 through 60.19. The NSPS General Provisions apply to the owner or operator of any stationary source that contains an affected facility, the construction or modification of which commenced after the date of publication in 40 C.F.R. Part 60 of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.

15. The NSPS General Provisions at 40 C.F.R. § 60.7(c) provide that if an owner or operator is required to install a continuous monitoring device by any NSPS, the owner or operator must submit an excess emissions and monitoring systems performance report and/or summary report form to the Administrator of EPA or his authorized representative. The written reports of excess emissions are required to include, among other information, specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected facility, along with the nature and cause of any malfunction (if known) and the corrective action taken or preventative measures adopted.

16. Under Section 111 of the CAA, 42 U.S.C. § 7411, EPA promulgated the Standards of Performance for Petroleum Refineries at 40 C.F.R. §§ 60.100 through 60.109 (Refinery NSPS Subpart J). Refinery NSPS Subpart J applies to affected facilities in petroleum refineries including, among other affected facilities, fuel gas combustion devices that commenced construction, reconstruction, or modification after June 11, 1973, and on or before May 14, 2007, and all Claus sulfur recovery plants that commenced construction, reconstruction, or modification after October 4, 1976, and on or before May 14, 2007, except Claus plants with a design capacity for sulfur feed of 20 long tons per day or less.

17. Refinery NSPS Subpart J at 40 C.F.R. § 60.104(a)(1) prohibits the owner or operator of an affected fuel gas combustion device from burning any fuel gas that contains hydrogen sulfide (H₂S) in excess of 230 milligrams per dry standard cubic meter (mg/dscm).

18. Refinery NSPS Subpart J at 40 C.F.R. § 60.104(a)(2)(i) prohibits the owner or operator from discharging or causing the discharge of any gases into the atmosphere containing in excess of 250 parts per million by volume on a dry basis (ppmvd) sulfur dioxide (SO₂) at zero percent excess air from any affected Claus sulfur recovery plant with an oxidation control system.

19. Under Section 111 of the CAA, 42 U.S.C. § 7411, EPA promulgated the NSPS for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007 at 40 C.F.R. §§ 60.100a through 60.109a (Refinery NSPS Subpart Ja). Refinery NSPS Subpart Ja applies to affected facilities in petroleum refineries including, among other affected facilities, fuel gas combustion devices (including process heaters) and sulfur recovery plants that commenced construction, modification, or reconstruction after May 14, 2007.

20. Refinery NSPS Subpart Ja at 40 C.F.R. § 60.102a(g)(1)(ii) prohibits the owner or operator of an affected fuel gas combustion device from burning in any fuel gas combustion device any fuel gas

that contains H₂S in excess of 162 parts per million by volume (ppmv) determined hourly on a 3-hour rolling average basis. Based on the definition of “standard conditions” at 40 C.F.R. § 60.2, the 162 ppmv H₂S limit specified by Refinery NSPS Subpart Ja is equivalent to the 230 mg/dscm H₂S limit specified by Refinery NSPS Subpart J.

21. Under Section 112 of the CAA, U.S.C. § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery at 40 C.F.R. §§ 63.1560 through 63.1579 (Refinery MACT 2). Refinery MACT 2 applies to, among other affected sources, the process vent or group of process vents on Claus or other types of sulfur recovery plant units or the tail gas treatment units serving sulfur recovery plants that are associated with sulfur recovery.

22. The owner or operator of an existing affected facility was required to comply with the emission limitations for existing affected sources in Refinery MACT 2 by April 11, 2005.

23. Refinery MACT 2 at 40 C.F.R. § 63.1568(a) requires the owner or operator of a sulfur recovery unit (SRU) subject to the NSPS for sulfur oxides in 40 C.F.R. § 60.104 or § 60.102a(f)(1) to meet the emission limitations required by those regulations.

24. The Administrator of EPA (Administrator) may assess a civil penalty of up to \$57,617 per day of violation up to a total of \$460,926 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

25. Section 113(d)(1) limits the Administrator’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

26. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

27. At all relevant times, Respondent owned and operated a petroleum refinery at 2408 Gambrinus Avenue SW, Canton, Ohio (Canton Refinery).

28. At all relevant times, Respondent was and is a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

29. At all relevant times, Respondent owned and operated fuel gas combustion devices at the Canton Refinery identified as the Process Heaters Emissions Unit (EU) Group (EUs B015, B016, B019, B020, B021, B022, B023, B027, B028, and B029) and the #14 Boiler (EU B031). These fuel gas combustion devices were subject to the NSPS General Provisions at 40 C.F.R. § 60.7(c) and Refinery NSPS Subpart J at 40 C.F.R. § 60.104(a)(1) because they were constructed, reconstructed, or modified after June 11, 1973, and on or before May 14, 2007.

30. At all relevant times, Respondent owned and operated a fuel gas combustion device at the Canton Refinery identified as the Ultra-Low Sulfur Diesel Reactor Charge Heater (EU B033). This fuel gas combustion device was subject to the NSPS General Provisions at 40 C.F.R. § 60.7(c) and Refinery NSPS Subpart Ja at 40 C.F.R. § 60.102a(g)(1)(ii) because it was constructed, reconstructed, or modified after May 14, 2007.

31. At all relevant times, Respondent owned and operated a Claus sulfur recovery plant at the Canton Refinery identified as the SRU EU Group (EUs P011 and P016). The SRU EU Group was subject to the NSPS General Provisions at 40 C.F.R. § 60.7(c), NSPS Subpart J at 40 C.F.R.

§ 60.104(a)(2)(i), Refinery MACT 2 at 40 C.F.R. § 63.1568(a), and OAC Rule 3745-31-05(A)(3) of the Ohio SIP, because they were sulfur recovery plant units constructed, reconstructed, or modified after October 4, 1976 and on or before May 14, 2007, because they contain process vents or groups of process vents on Claus sulfur recovery plant units or the tail gas treatment units serving sulfur recovery plants that are associated with sulfur recovery, and because they were emission sources at a Title V facility that require the issuance of a permit to install.

32. On June 21, 2021, OEPA issued Title V Permit Number P0127829 for the Canton Refinery (2021 Title V Permit), which provides the NSPS General Provisions, Refinery NSPS Subparts J and Ja, Refinery MACT 2, and BAT requirements for the fuel gas combustion devices and the Claus sulfur recovery plant, including:

- a. Prohibiting Respondent from burning any fuel gas in the Process Heaters EU Group or EU B031 that contains H₂S in excess of the Refinery NSPS Subpart J limit of 162 ppmv specified at 40 C.F.R. § 60.104(a)(1), as set forth in Conditions C.1(b)(1)(i) and C.2(b)(1)(h) of the 2021 Title V Permit;
- b. Prohibiting Respondent from violating the applicable Refinery NSPS Subpart Ja emission limit for EU B033 specified at 40 C.F.R. § 60.102a(g)(1), as set forth in Condition C.3(b)(1)(i) of the 2021 Title V Permit;
- c. Prohibiting Respondent from emitting SO₂ from the SRU EU Group in excess of the Refinery NSPS Subpart J and Refinery MACT 2 limit of 250 ppmvd as a rolling, 12-hour average at zero percent excess air specified at 40 C.F.R. §§ 60.104(a)(2)(i) and 63.1568(a)(1), as set forth in Conditions C.8(b)(1)(e) and C.8(b)(1)(g) of the 2021 Title V Permit;

- d. Prohibiting Respondent from exceeding the following rolling, 12-hour average SO₂ BAT emission limits for the SRU EU Group specified pursuant to OAC Rule 3745-31-05(A)(3), as set forth in Condition C.8(b)(1)(a) of the 2021 Title V Permit:
 - i. 21.1 pounds per hour for EUs P011 and P016 combined, and
 - ii. 8.66 pounds per hour for EU P016 only; and
- e. Requiring Respondent to submit reports for the SRU EU Group and its continuous SO₂ monitoring system specified by the NSPS General Provisions at 40 C.F.R. § 60.7(c) within 30 days following the end of each calendar quarter to the Canton City Health Department, Air Pollution Control Division, as set forth in Condition B.30(a) of the 2021 Title V Permit.

33. Pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a), Complainant issued an Information Request to Respondent on August 23, 2023.

34. On September 21, 2023, Respondent provided a response to the Information Request (September 2023 Documents).

35. On February 12, 2024, Complainant issued to Respondent a Notice and Finding of Violation (NOV/FOV) alleging that Respondent violated the Ohio SIP, NSPS General Provisions, Refinery NSPS Subparts J and Ja, and Refinery MACT 2 at the Canton Refinery.

36. On March 18, 2024, representatives of Respondent and EPA discussed the NOV/FOV.

37. Based on the information contained in the September 2023 Documents and information provided by Respondent during the March 18, 2024 meeting and subsequent communications, Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

- a. Respondent violated Refinery NSPS Subpart J at 40 C.F.R. § 60.104(a)(1) and 2021 Title V Permit Condition C.1(b)(1)(i) by exceeding the 162 ppmv rolling, 3-hour average H₂S concentration limit in the fuel gas for EUs B028 and B029 for 72 hours between August 6, 2022 and May 27, 2023;
- b. Respondent violated Refinery NSPS Subparts J and Ja at 40 C.F.R. §§ 60.104(a)(1) and 60.102a(g)(1)(ii) and 2021 Title V Permit Conditions C.1(b)(1)(i), C.2(b)(1)(h), and C.3(b)(1)(i) by exceeding the 162 ppmv rolling, 3-hour average H₂S concentration limit in the fuel gas for EUs B015, B016, B019, B020, B021, B022, B023, B027, B031, and B033 for 73 hours between August 6, 2022 and May 27, 2023;
- c. Respondent violated Refinery NSPS Subpart J at 40 C.F.R. § 60.104(a)(2)(i), Refinery MACT 2 at 40 C.F.R. 63.1568(a)(1), and 2021 Title V Permit Conditions C.8(b)(1)(e) and C.8(b)(1)(g) by exceeding the 250 ppmvd rolling, 12-hour average SO₂ emissions limit at zero percent excess air from EUs P011 and P016 for 247 hours between December 23, 2022 and July 14, 2023;
- d. Respondent violated the NSPS General Provisions at 40 C.F.R. § 60.7(c) and 2021 Title V Permit Condition B.30(a) by failing to prepare and submit a written report that included the nature and cause of any malfunction (if known) and the corrective action taken or preventative measures adopted for the SO₂ excess emissions event at EUs P011 and P016 that began on January 30, 2023;
- e. Respondent violated the BAT limits specified in OAC Rule 3745-31-05(A)(3) and 2021 Title V Permit Condition C.8(b)(1)(a) by exceeding the 8.66 pounds per hour rolling, 12-

hour average SO₂ emissions limit for EU P016 for 343 hours between December 23, 2022 and July 14, 2023; and

- f. Respondent violated the BAT limits specified in OAC Rule 3745-31-05(A)(3) and 2021 Title V Permit Condition C.8(b)(1)(a) by exceeding the 21.1 pounds per hour rolling, 12-hour average SO₂ emissions limit for EUs P011 and P016 for 60 hours between December 23, 2022 and July 14, 2023.

Civil Penalty

38. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and Respondent's cooperation in resolving the alleged violations, Complainant has determined that an appropriate civil penalty to settle this action is \$225,715.

39. Penalty Payment. Respondent agrees to:

- a. Pay the civil penalty of \$225,715 within 30 days after the effective date of this CAFO.
- b. Pay the civil penalty using any method provided in the table below.

Payment Method	Payment Instructions
<p>Automated Clearinghouse (ACH) payments made through the US Treasury</p>	<p>US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.</p>
<p>Wire transfers made through Fedwire</p>	<p>Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.</p>
<p>Payments made through Pay.gov</p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> • Go to Pay.gov and enter “SFO 1.1” in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. • Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field
<p>Cashier’s or certified check payable to “Treasurer, United States of America.”</p> <p>Please notate the CAFO docket number on the check</p>	<p>For standard delivery:</p> <p>U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979078 St. Louis, Missouri 63197-9000</p> <p>For signed receipt confirmation (FedEx, UPS, Certified Mail, etc):</p> <p>U.S. Environmental Protection Agency Government Lockbox 979078 3180 Rider Trail S. Earth City, Missouri 63045</p>

40. Within 24 hours of the payment of the civil penalty, Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Jolie McLaughlin
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
mclaughlin.jolie@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
R5hearingclerk@epa.gov

41. This civil penalty is not deductible for federal tax purposes.

42. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

43. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10

percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

44. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (IRS) annually, a completed IRS Form 1098-F (Fines, Penalties, and Other Amounts) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (TIN), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (Request for Taxpayer Identification Number and Certification), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of a TIN issued by the IRS.

General Provisions

45. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: mclaughlin.jolie@epa.gov (for Complainant), and rvenegas@marathonpetroleum.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.
46. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.
47. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.
48. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state, and local laws. Except as provided in Paragraph 46, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.
49. Respondent certifies that it is complying fully with the Ohio SIP, NSPS General Provisions, Refinery NSPS Subparts J and Ja, and Refinery MACT 2 at the Canton Refinery.
50. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).
51. The terms of this CAFO bind Respondent, its successors and assignees.

52. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

53. Each party agrees to bear its own costs and attorney's fees in this action.

54. This CAFO constitutes the entire agreement between the parties.

Marathon Petroleum Company LP, Respondent
In the Matter of: Marathon Petroleum Company LP
Docket No. CAA-05-2024-0038

Sep 11, 2024

Date


Kevin Bogard (Sep 11, 2024 17:14 EDT)

Kevin Bogard
Senior Vice President of Refining
Marathon Petroleum Company LP

Approved as to Form


RDV

**United States Environmental Protection Agency, Complainant
In the Matter of: Marathon Petroleum Company LP
Docket No. CAA-05-2024-0038**

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Marathon Petroleum Company LP
Docket No. CAA-05-2024-0038

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5