

1 Plaintiffs, the United States of America, by the authority of the Attorney General of the
2 United States and through its undersigned counsel, acting at the request and on behalf of the
3 United States Environmental Protection Agency (“EPA”), and the San Joaquin Valley Unified
4 Air Pollution Control District (“SJVUAPCD”), file this Complaint and allege as follows:

5 **NATURE OF ACTION**

6 1. This is a civil action brought under Section 113(b) of the Clean Air Act, 42
7 U.S.C. § 7413(b), and Section 325(c) of the Emergency Planning and Community Right-To-
8 Know Act (“EPCRA”), 42 U.S.C. § 11045(c), for the assessment of civil penalties against Kern
9 Oil & Refining Co. (“Kern Oil” or “Defendant”), for violations of Section 111 of the Clean Air
10 Act, 42 U.S.C. § 7411; Section 313 of EPCRA, 42 U.S.C. § 11023; and the regulations
11 promulgated thereunder at its petroleum refinery located in Bakersfield, California (“Kern Oil
12 Refinery”). Specifically, the United States alleges that Kern Oil failed to comply with
13 (i) monitoring and reporting requirements for petroleum refinery flares, equipment leaks, and
14 wastewater systems under Section 111 of the Clean Air Act; and (ii) annual toxic chemical
15 release reporting requirements under Section 313 of EPCRA.

16 **JURISDICTION AND VENUE**

17 2. This Court has jurisdiction over the subject matter of this action under Section
18 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b); Section 325(c)(4) of EPCRA, 42 U.S.C.
19 § 11045(c)(4); and 28 U.S.C. §§ 1331, 1345, and 1355. In addition, this Court has subject matter
20 jurisdiction over the claims of SJVUAPCD under 28 U.S.C. § 1367(a) and principles of
21 supplemental jurisdiction because the claims of SJVUAPCD are so related to the Clean Air Act
22 claims of the United States that they form the same case or controversy.
23

STATUTORY AND REGULATORY FRAMEWORK

I. CLEAN AIR ACT

A. Purpose of the Clean Air Act

9. The primary purpose of the Clean Air Act, 42 U.S.C. §§ 7401 to 7671q, is 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).

B. Standards of Performance for New Stationary Sources

10. Section 111(b)(1) of the Clean Air Act, 42 U.S.C. § 7411(b)(1), required the EPA Administrator to: (i) publish a list of categories of stationary sources that, in his judgment, cause or contribute significantly to air pollution that may reasonably be anticipated to endanger the public health or welfare; and (ii) promulgate standards of performance for new sources within those categories. These standards, commonly known as the New Source Performance Standards (“NSPS”), are codified at 40 C.F.R. Part 60.

11. On December 23, 1971, EPA promulgated the NSPS General Provisions, codified at 40 C.F.R. Part 60, Subpart A (“General NSPS”). 36 Fed. Reg. 24,877 (1971). The General NSPS includes requirements that apply to the owner or operator of an affected facility at a stationary source that is subject to a category-specific NSPS. *See* 40 C.F.R. § 60.1. An *affected facility* is any apparatus to which an NSPS applies. *Id.* § 60.2. A *stationary source* is any building, structure, facility, or installation which emits or may emit any air pollutant. *Id.* § 60.2.

1. NSPS for Petroleum Refineries

12. On March 8, 1974, EPA promulgated the NSPS for Petroleum Refineries, codified at 40 C.F.R. Part 60, Subpart J (“Refinery NSPS”). 39 Fed. Reg. 9,307 (1974). The affected facilities in petroleum refineries to which the Refinery NSPS applies are, among other

1 things, fuel gas combustion devices that commenced construction, reconstruction, or
2 modification after June 11, 1973, and on or before May 14, 2007 (for fuel gas combustion
3 devices that are also flares, the latter date is extended to on or before June 24, 2008). 40 C.F.R.
4 § 60.100(a)-(b). A *fuel gas combustion device* is any equipment (such as process heaters,
5 boilers, and flares) used to combust fuel gas, except facilities in which gases are combusted to
6 produce sulfur or sulfuric acid. *Id.* § 60.101(g).

7 13. Pursuant to the Refinery NSPS requirement to limit the concentration of hydrogen
8 sulfide in combusted fuel gas as a surrogate for sulfur dioxide emissions, no owner or operator
9 shall burn in any fuel gas combustion device any fuel gas that contains hydrogen sulfide in
10 excess of 230 milligrams per dry standard cubic meter, except the combustion in a flare of
11 process upset gases or fuel gas that is released to the flare as a result of relief valve leakage or
12 other emergency malfunction. *Id.* § 60.104(a)(1).

13 14. For fuel gas combustion devices subject to the hydrogen sulfide limit, the
14 Refinery NSPS requires the owner or operator to install, calibrate, maintain, and operate an
15 instrument for continuously monitoring and recording either (i) the concentration of sulfur
16 dioxide emissions into the atmosphere; or (ii) the concentration of hydrogen sulfide in fuel gases
17 before the gases are burned in the device. *Id.* § 60.105(a)(3)-(4). Except for system breakdowns,
18 repairs, calibration checks, and required zero and span adjustments, all continuous monitoring
19 systems must be in continuous operation. *Id.* § 60.13(e).

20 15. All continuous monitoring systems and monitoring devices must be installed and
21 operational prior to conducting required performance tests. *Id.* § 60.13(b). Performance tests
22 must be performed within sixty days after achieving the maximum production rate at which the
23 affected facility will be operated, but not later than 180 days after initial startup of such facility.

1 *Id.* § 60.8(a). The owner or operator must comply with the hydrogen sulfide limit on and after
2 the date on which the required initial performance test is completed, but no later than sixty days
3 after achieving the maximum production rate at which the affected facility will be operated or
4 180 days after initial startup, whichever comes first. *Id.* § 60.104.

5 16. Pursuant to the General NSPS, the owner or operator required to install a
6 continuous monitoring device must submit excess emissions and monitoring systems
7 performance reports or summary report forms postmarked by the thirtieth day following the end
8 of each six-month period. *Id.* § 60.7(c).

9 2. NSPS for Equipment Leaks in Petroleum Refineries

10 17. On May 30, 1984, EPA promulgated the NSPS for equipment leaks of volatile
11 organic compounds (“VOC”) in petroleum refineries, codified at 40 C.F.R. Part 60, Subpart
12 GGG (“Refinery Leak NSPS”). 49 Fed. Reg. 22,606 (1984). The affected facilities in petroleum
13 refineries to which the Refinery Leak NSPS applies are compressors and the group of all
14 equipment within a process unit at petroleum refineries that commenced construction,
15 modification, or reconstruction after January 4, 1983, and on or before November 7, 2006. 40
16 C.F.R. § 60.590(a)-(b). A *process unit* is the components assembled to produce intermediate or
17 final products from petroleum, unfinished petroleum derivatives, or other intermediaries. *Id.*
18 § 60.590(e). *Equipment* is each valve, pump, pressure relief device, sampling connection
19 system, open-ended valve or line, and flange or other connector in VOC service. *Id.* § 60.591.
20 *In VOC service* means that the piece of equipment contains or contacts a process fluid that is at
21 least ten percent VOC by weight. *Id.* § 60.591 (incorporating definitions from § 60.481).

22 18. In general, the Refinery Leak NSPS requires (i) a leak detection and repair
23 program for valves in gas/vapor and light liquid service and pumps in light liquid service; (ii) a

1 seal system that includes a barrier fluid system for certain compressors; (iii) a closed-purge,
2 closed-loop, or closed-vent system for certain sampling systems; (iv) a cap, blind flange, plug, or
3 second valve for certain open-ended lines; and (v) no detectable emissions for pressure relief
4 devices in gas/vapor service during normal operations. 49 Fed. Reg. 22,598 and 22,599 (1984);
5 *see also* 40 C.F.R. §§ 60.482-3(a), 60.482-5(a), and 60.482-6(a).

6 19. Among other things, the Refinery Leak NSPS requires the owner or operator to
7 submit semiannual reports beginning six months after the date of initial startup. 40 C.F.R.
8 § 60.592(e) (incorporating by reference § 60.487(a)). The initial semiannual report must identify
9 the process unit and the number of valves, pumps, and compressors subject to the Refinery Leak
10 NSPS requirements. For each reporting period, all semiannual reports must indicate (i) the
11 number of valves, pumps, or compressors for which leaks were detected for each month; (ii) the
12 number of valves, pumps, or compressors for which leaks were not repaired in each month;
13 (iii) the facts that explain each delay of repair and why a process unit shutdown was technically
14 infeasible; (iv) dates of process unit shutdowns; and (v) revisions to the items identified in the
15 initial semiannual report. *Id.* § 60.592(e) (incorporating by reference § 60.487(b)-(c)).

16 3. NSPS for Petroleum Refinery Wastewater Systems

17 20. On November 23, 1988, EPA promulgated the NSPS for VOC emissions from
18 petroleum refinery wastewater systems, codified at 40 C.F.R. Part 60, Subpart QQQ (“Refinery
19 Wastewater NSPS”). 53 Fed. Reg. 47,623 (1988). The affected facilities in petroleum refineries
20 to which the Refinery Wastewater NSPS applies are each individual drain system or oil-water
21 separator (as well as their combination or “aggregate”) that commenced construction,
22 modification, or reconstruction after May 4, 1987. 40 C.F.R. § 60.690(a). An *individual drain*
23 *system* is all process drains connected to the first common downstream junction box, and

1 includes all such drains and common junction box, together with their associated sewer lines and
2 other junction boxes, down to the receiving oil-water separator. *Id.* § 60.691. The construction
3 or installation of a new individual drain system constitutes a modification to an aggregate facility
4 (in this context, a new individual drain system is limited to all process drains and the first
5 common junction box). *Id.* § 60.690(b).

6 21. Among other things, the Refinery Wastewater NSPS requires the owner or
7 operator to submit no later than sixty days after initial startup a certification that the equipment
8 necessary to comply with the Refinery Wastewater NSPS has been installed and that the required
9 initial inspections or tests of process drains, sewer lines, junction boxes, oil-water separators, and
10 closed vent systems and control devices have been carried out. *Id.* § 60.698(b)(1). Thereafter,
11 the owner or operator must submit semiannually a certification that all of the required
12 inspections have been carried out in accordance with the Refinery Wastewater NSPS. In
13 addition, the owner or operator must report initially and semiannually thereafter all inspections
14 when a water seal was dry or otherwise breached, when a drain cap or plug was missing or
15 improperly installed, or when cracks, gaps, or other problems were identified that could result in
16 VOC emissions, including information about repairs or corrective action taken. *Id.* § 60.698(c).

17 **C. Enforcement of NSPS Requirements**

18 **1. Federal Enforcement**

19 22. Section 111(e) of the Clean Air Act, 42 U.S.C. § 7411(e), makes it unlawful for
20 any owner or operator of any new source to operate such source in violation of any applicable
21 NSPS.

22 23. Pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), the EPA
23 Administrator is authorized to commence a civil action for appropriate relief, including

1 injunctive relief and civil penalties, against any person who has violated or is in violation of any
2 requirement or prohibition of any rule promulgated under Section 111 of the Clean Air Act, 42
3 U.S.C. § 7411.

4 **2. SJVUAPCD Enforcement**

5 24. Pursuant to Section 111(c)(1) of the Clean Air Act, 42 U.S.C. § 7411(c)(1), each
6 State may develop and submit to the EPA Administrator a procedure for implementing and
7 enforcing NSPS in its State. If the EPA Administrator finds the State procedure is adequate, he
8 shall delegate to such State any authority he has under the Clean Air Act to implement and
9 enforce such NSPS. Such delegation does not prohibit EPA from enforcing any NSPS
10 requirement. 42 U.S.C. § 7411(c)(2).

11 25. Pursuant to SJVUAPCD Rule 4001, SJVUAPCD incorporated by reference
12 specific federal NSPS into its rules. Subsequently, EPA delegated to SJVUAPCD the authority
13 to implement and enforce specific NSPS, including the General NSPS, Refinery NSPS, Refinery
14 Leak NSPS, and Refinery Wastewater NSPS. *See* 40 C.F.R. § 60.4(d)(2)(vii).

15 26. Pursuant to Sections 42402(b)(1) and 42403(a) of the California Health and
16 Safety Code, the attorney for an air pollution control district in which a violation occurs can
17 assess and recover civil penalties in a civil action bought in the name of the people of the State of
18 California against any person who violates any rule or regulation of the air pollution control
19 district issued pursuant to Sections 39000 to 42708 of the California Health and Safety Code.

20 **II. EPCRA**

21 **A. Summary and Purpose of Toxic Chemical Release Reporting**

22 27. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, the
23 EPA Administrator promulgated on February 16, 1988, regulations setting forth the reporting

1 requirement under Section 313 of EPCRA. 53 Fed. Reg. 4,525 (1988). These regulations are
2 codified at 40 C.F.R. Part 372.

3 28. Section 313(a) of EPCRA requires the owner or operator of a facility subject to
4 Section 313 to complete a toxic chemical release form for each toxic chemical listed under
5 Section 313(c) that was manufactured, processed, or otherwise used in quantities exceeding the
6 toxic chemical threshold quantity established by Section 313(f) during the preceding calendar
7 year at such facility. 42 U.S.C. § 11023(a); *see also* 40 C.F.R. § 372.30(a).

8 29. The toxic chemical release forms required under Section 313 of EPCRA are
9 intended to provide information to the federal, state, and local governments and the public
10 (including citizens of communities surrounding covered facilities) (i) to inform persons about
11 releases of toxic chemicals to the environment; (ii) to assist governmental agencies, researchers,
12 and other persons in the conduct of research and data gathering; (iii) to aid in the development of
13 appropriate regulations, guidelines, and standards; and (iv) for other similar purposes. 42 U.S.C.
14 § 11023(h); *see also* 40 C.F.R. § 372.1.

15 30. Pursuant to Section 313(g)(1) of EPCRA, EPA published a uniform Toxic
16 Chemical Release Inventory Form (“Form R”) for facilities that are subject to the reporting
17 requirements of Section 313. 42 U.S.C. § 11023(g)(1); *see also* 40 C.F.R. § 372.85(a). Section
18 313(a) requires the owner or operator of a facility subject to Section 313 to submit on July 1 to
19 EPA and the designated state official each Form R that includes the data reflecting releases
20 during the preceding calendar year. 42 U.S.C. § 11023(a); *see also* 40 C.F.R. § 372.30(a), (d).

21 **B. Applicability of Toxic Chemical Release Reporting Requirements**

22 31. The requirements of Section 313 of EPCRA apply to the owner and operator of a
23 facility that (i) has ten or more full-time employees; (ii) is in Standard Industrial Classification

1 codes 20 through 39; and (iii) manufactured, processed, or otherwise used one or more toxic
2 chemicals listed under Section 313(c) in excess of the quantity of that toxic chemical established
3 under Section 313(f). 42 U.S.C. § 11023(b)(1)(A); *see also* 40 C.F.R. § 372.22.

4 32. The toxic chemicals subject to Section 313 of EPCRA are those chemicals listed
5 pursuant to Section 313(c) (as revised by Section 313(d) or (e)) and codified at 40 C.F.R.
6 § 372.65. 42 U.S.C. § 11023(c)-(e). Such toxic chemicals include benzo(g,h,i)perylene;
7 cyclohexane; lead compounds; mercury compounds; molybdenum trioxide; naphthalene; and
8 1,2,4-trimethylbenzene. 40 C.F.R. § 372.65(a)-(c).

9 33. With respect to the calendar years after 1988, the threshold amounts for purposes
10 of reporting toxic chemicals under Section 313 of EPCRA are (i) 10,000 pounds per year for a
11 toxic chemical used at a facility; and (ii) 25,000 pounds per year for a toxic chemical
12 manufactured or processed at a facility. 42 U.S.C. § 11023(f)(1); *see also* 40 C.F.R. § 372.25(a)-
13 (b). EPA has established lower threshold amounts for manufacturing, processing, or otherwise
14 using toxic chemicals of special concern, including benzo(g,h,i)perylene (10 pounds per year);
15 lead compounds (100 pounds per year); and mercury compounds (10 pounds per year). 42
16 U.S.C. § 11023(f)(2) and 40 C.F.R. § 372.28.

17 **C. Federal Enforcement of Toxic Chemical Release Reporting Requirements**

18 34. Pursuant to Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4), the EPA
19 Administrator is authorized to bring an action to assess and collect civil penalties against any
20 person who violates any requirement of Section 313 of EPCRA.
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22
23

GENERAL ALLEGATIONS

I. CLEAN AIR ACT

A. General NSPS

35. Since about 1976, Kern Oil has been both the owner and the operator of the Kern Oil Refinery located at 7724 East Panama Lane, Bakersfield, California. The Kern Oil Refinery was originally built and began operating about 1934.

36. On or about January 31, 2003, SJVUAPCD issued an operating permit to Kern Oil for the Kern Oil Refinery, as required by Title V of the Clean Air Act, 42 U.S.C. §§ 7661 through 7661f (“Title V Operating Permit”). SJVUAPCD renewed Kern Oil’s Title V Operating Permit on or about January 19, 2012, and on or about December 27, 2017.

37. From about 2005 to 2006, as part of its Ultra-Low Sulfur Diesel Project, Kern Oil physically changed its existing diesel hydrotreater and built a new naphtha hydrotreater, naphtha reformer, amine system, sour water system, and sulfur recovery plant (“ULSD Project Units”). In about 2006, Kern Oil began operating the ULSD Project Units.

38. The Kern Oil Refinery is a *stationary source* within the meaning of Section 111(a)(3) of the Clean Air Act, 42 U.S.C. § 7411(a)(3), and as that term is defined in 40 C.F.R. § 60.2, because it is a “building, structure, facility, or installation” that emits air pollutants.

39. The Kern Oil Refinery is a *petroleum refinery* as that term is defined in 40 C.F.R. §§ 60.101(a), 60.591, and 60.691, because is it a facility engaged in producing gasoline, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through re-distillation, cracking, or reforming of unfinished petroleum derivatives.

1 **B. Refinery NSPS**

2 40. In about 1970, the main flare at the Kern Oil Refinery was built and began
3 operating (“Main Flare”).

4 41. The Main Flare is a *fuel gas combustion device* as that term is defined in 40
5 C.F.R. § 60.101(g), because it is a flare used to combust fuel gas (*i.e.*, gas which is generated at a
6 petroleum refinery and which is combusted; *see* 40 C.F.R. § 60.101(d)).

7 42. With respect to the Refinery NSPS, the Main Flare is an *existing facility* as that
8 term is defined in 40 C.F.R. § 60.2, because the Main Flare is the type of apparatus for which the
9 Refinery NSPS was promulgated (in this case, a fuel gas combustion device), and construction
10 commenced on the Main Flare before the date of proposal of the Refinery NSPS.

11 43. In about 1984, Kern Oil permanently shut down the thermal cracker at the Kern
12 Oil Refinery.

13 44. The 1984 thermal cracker shutdown was a *modification* to the Main Flare within
14 the meaning of Section 111(a)(4) of the Clean Air Act, 42 U.S.C. § 7411(a)(4), and as that term
15 is defined in 40 C.F.R. §§ 60.2 and 60.14(a), because the thermal cracker shutdown was a
16 physical or operational change to the Main Flare that resulted in an increase in the emission rate
17 to the atmosphere of sulfur oxides.

18 45. The 2005 to 2006 addition of each of the ULSD Project Units was also a
19 *modification* to the Main Flare within the meaning of Section 111(a)(4) of the Clean Air Act, 42
20 U.S.C. § 7411(a)(4), and as that term is defined in 40 C.F.R. §§ 60.2 and 60.14(a), because the
21 addition of each of the ULSD Project Units was a physical or operational change to the Main
22 Flare that resulted in an increase in the emission rate to the atmosphere of sulfur oxides.

1 46. Upon modification, an existing facility becomes an affected facility for each
2 pollutant to which an NSPS applies and for which there is an increase in the emission rate to the
3 atmosphere. 40 C.F.R. § 60.14(a). As a result of the thermal cracker shutdown and also as a
4 result of the addition of each of the ULSD Project Units, all of which were modifications to the
5 Main Flare, the Main Flare became an *affected facility* (as that term is defined in 40 C.F.R.
6 §§ 60.2 and 60.100(a) to (b)) subject to the General NSPS and the Refinery NSPS (*i.e.*, 40 C.F.R.
7 Part 60, Subparts A and J).

8 47. Kern Oil is an *owner or operator* of the Main Flare and the Kern Oil Refinery as
9 that term is defined in 40 C.F.R. § 60.2 and within the meaning of Section 111(a)(5) of the Clean
10 Air Act, 42 U.S.C. § 7411(a)(5), because Kern Oil is a person who owns or operators an affected
11 facility (the Main Flare) or a stationary source (the Kern Oil Refinery) of which an affected
12 facility is part.

13 **C. Refinery Leak NSPS**

14 48. Each of the ULSD Project Units – the diesel hydrotreater, naphtha hydrotreater,
15 naphtha reformer, amine system, sour water system, and sulfur recovery plant – is a *process unit*
16 as that term is defined in 40 C.F.R. § 60.590(e), because each of the ULSD Project Units consists
17 of components assembled to produce intermediate or final products from petroleum, unfinished
18 petroleum derivatives, or other intermediates.

19 49. Each of the ULSD Project Units includes *equipment* that is *in VOC service* as
20 those terms are defined in 40 C.F.R. §§ 60.481 and 60.591, because each of the ULSD Project
21 Units includes valves, pumps, pressure relief devices, sampling connection systems, open-ended
22 valves or lines, flanges, or other connectors that contain or contact process fluids that are at least
23 ten percent VOC by weight.

1 50. With respect to the Refinery Leak NSPS, the group of equipment in VOC service
2 at the diesel hydrotreater is an *existing facility* as that term is defined in 40 C.F.R. § 60.2,
3 because the group of equipment in VOC service at the diesel hydrotreater is the type of apparatus
4 for which the Refinery Leak NSPS was promulgated (in this case, the group of all the equipment
5 within a process unit), and construction commenced on the the group of equipment in VOC
6 service at the diesel hydrotreater before the date of proposal of the Refinery Leak NSPS.

7 51. The Ultra-Low Sulfur Diesel Project included the *modification* of the group of
8 equipment in VOC service at the diesel hydrotreater within the meaning of Section 111(a)(4) of
9 the Clean Air Act, 42 U.S.C. § 7411(a)(4), and as that term is defined in 40 C.F.R. §§ 60.2 and
10 60.14(a), because the Ultra-Low Sulfur Diesel Project included the physical or operational
11 change to the group of equipment in VOC service at the diesel hydrotreater that resulted in an
12 increase in the emission rate to the atmosphere of VOCs.

13 52. Upon modification, an existing facility becomes an affected facility for each
14 pollutant to which an NSPS applies and for which there is an increase in the emission rate to the
15 atmosphere. 40 C.F.R. § 60.14(a). As a result of the Ultra-Low Sulfur Diesel Project, which
16 included the modification of the group of equipment in VOC service at the diesel hydrotreater,
17 the group of equipment in VOC service at the diesel hydrotreater became an *affected facility* (as
18 that term is defined in 40 C.F.R. §§ 60.2 and 60.590(a) to (b)) subject to the General NSPS and
19 the Refinery Leak NSPS (*i.e.*, 40 C.F.R. Part 60, Subparts A and GGG).

20 53. The Ultra-Low Sulfur Diesel Project included the construction of the group of
21 equipment in VOC service at the naphtha hydrotreater, naphtha reformer, amine system, sour
22 water system, and sulfur recovery plant, each group of equipment being a *new source* within the
23 meaning of Section 111(a)(2) of the Clean Air Act, 42 U.S.C. § 7411(a)(2), because each such

1 group of equipment is the type of apparatus for which the Refinery Leak NSPS was promulgated
2 (in this case, the group of all the equipment within a process unit), and construction commenced
3 on each such group of equipment after the date of proposal of the Refinery Leak NSPS.

4 54. As a result of the Ultra-Low Sulfur Diesel Project, which included the
5 construction of new sources at the naphtha hydrotreater, naphtha reformer, amine system, sour
6 water system, and sulfur recovery plant, each group of equipment in VOC service at the naphtha
7 hydrotreater, naphtha reformer, amine system, sour water system, and sulfur recovery plant is an
8 *affected facility* (as that term is defined in 40 C.F.R. §§ 60.2 and 60.590(a) to (b)) subject to the
9 General NSPS and the Refinery Leak NSPS (*i.e.*, 40 C.F.R. Part 60, Subparts A and GGG).

10 55. Kern Oil is an *owner or operator* of the Kern Oil Refinery as that term is defined
11 in 40 C.F.R. § 60.2 and within the meaning of Section 111(a)(5) of the Clean Air Act, 42 U.S.C.
12 § 7411(a)(5), because Kern Oil is a person who owns or operators a stationary source (the Kern
13 Oil Refinery) of which an affected facility (the group of equipment in VOC service at the diesel
14 hydrotreater, naphtha hydrotreater, naphtha reformer, amine system, sour water system, and
15 sulfur recovery plant) is part.

16 56. According to Kern Oil's Title V Operating Permit, all of the ULSD Project Units
17 are subject to the Refinery Leak NSPS (*see* the following conditions of Kern Oil's Title V
18 Operating Permit: (i) for the diesel hydrotreater, Permit Unit S-37-77-17, Condition 36; (ii) for
19 the naphtha hydrotreater, Permit Unit S-37-118-4, Condition 38; (iii) for the naphtha reformer,
20 Permit Unit S-37-119-4, Condition 32; (iv) for the amine system, Permit Unit S-37-120-3,
21 Condition 4; (v) for the sour water system, Permit Unit S-37-121-4, Condition 5; and (vi) for the
22 sulfur recovery plant, Permit Unit S-37-122-6, Condition 4).

1 **D. Refinery Wastewater NSPS**

2 57. The Ultra-Low Sulfur Diesel Project included the construction of a new sour
3 water system, which itself included new drains connected to Kern Oil Refinery's wastewater
4 system ("Sour Water Drain System").

5 58. The Sour Water Drain System is an *individual drain system* as that term is defined
6 in 40 C.F.R. § 60.691, because the Sour Water Drain System consists of process drains
7 connected to a common downstream junction box (*a junction box* is a manhole or access point to
8 a refinery wastewater sewer system line; *see* 40 C.F.R. § 60.691).

9 59. The addition of the Sour Water Drain System was a *modification* within the
10 meaning of Section 111(a)(4) of the Clean Air Act, 42 U.S.C. § 7411(a)(4), and as that term is
11 defined in 40 C.F.R. §§ 60.2, 60.14(a), and 60.690(b), because the construction or installation of
12 a new individual drain system, such as the Sour Water Drain System, constitutes a physical
13 change in the Kern Oil Refinery's existing wastewater system which increases the amount of
14 VOCs emitted to the atmosphere by the wastewater system.

15 60. The Sour Water Drain System is an *affected facility* (as that term is defined in 40
16 C.F.R. §§ 60.2 and 60.690(a)) subject to the General NSPS and the Refinery Wastewater NSPS
17 (*i.e.*, 40 C.F.R. Part 60, Subparts A and QQQ), because it was a modification to the Kern Oil
18 Refinery's existing wastewater system that commenced after the date of proposal of the Refinery
19 Wastewater NSPS.

20 61. Kern Oil is an *owner or operator* of the Sour Water Drain System and the Kern
21 Oil Refinery as that term is defined in 40 C.F.R. § 60.2 and within the meaning of Section
22 111(a)(5) of the Clean Air Act, 42 U.S.C. § 7411(a)(5), because Kern Oil is a person who owns

1 or operators an affected facility (the Sour Water Drain System) or a stationary source (the Kern
2 Oil Refinery) of which an affected facility is part.

3 62. According to Kern Oil's Title V Operating Permit, the Sour Water Drain System
4 is subject to the Refinery Wastewater NSPS (*see* Permit Unit S-37-121-4, Condition 6 of the
5 Title V Operating Permit).

6 **II. EPCRA**

7 **A. Toxic Chemical Release Reporting**

8 63. Since about 1976, Kern Oil has been both the owner and the operator of the Kern
9 Oil Refinery, which is a *facility* within the meaning of Section 329(4) of EPCRA, 42 U.S.C.
10 § 11049(4), and as that term is defined in 40 C.F.R. § 372.3, because it consists of buildings,
11 equipment, structures, and other stationary items which are located on a single site or contiguous
12 or adjacent sites (the Kern Oil Refinery) and which are owned or operated by the same person
13 (Kern Oil).

14 64. The Kern Oil Refinery has 10 or more *full-time employee[s]* as that term is
15 defined in 40 C.F.R. § 372.3, because it has 10 or more employees at 2,000 hours per year of
16 full-time equivalent employment.

17 65. The Kern Oil Refinery is classified in Standard Industrial Classification code
18 2911 (Petroleum Refining), which is within industry code 29.

19 **FIRST CLAIM FOR RELIEF**
20 (Clean Air Act – Failure to Monitor Main Flare)
(Federal and SJVUAPCD Claim)

21 66. Paragraphs 1 through 65, above, are realleged and incorporated herein by
22 reference.

1 72. Since the addition of the ULSD Project Units in about 2006 through about July
2 2015, Kern Oil violated the Refinery Leak NSPS by failing to submit semiannual reports for the
3 ULSD Project Units, as required by 40 C.F.R. § 60.592(e) (incorporating by reference
4 § 60.487(a)).

5 73. Since the addition of the ULSD Project Units in about 2006 through about
6 January 2016, Kern Oil violated the Refinery Wastewater NSPS by failing to submit semiannual
7 certifications and reports for the Sour Water Drain System, as required by 40 C.F.R.
8 § 60.698(b)(1) and (c).

9 74. As a result of the above-listed violations and pursuant to Section 113(b) of the
10 Clean Air Act, 42 U.S.C. § 7413(b), and 40 C.F.R. Part 19, Kern Oil is liable for the assessment
11 of civil penalties for violations through July 30, 2015, for the Refinery Leak NSPS violations and
12 through January 30, 2016, for the Refinery NSPS and Refinery Wastewater NSPS violations as
13 follows: (i) not more than \$37,500 per violation per day for each violation that occurred after
14 January 12, 2009, through November 2, 2015; and (ii) not more than \$99,681 per violation per
15 day for each violation that occurred after November 2, 2015.

16 75. Under Section 42402(b) of the California Health and Safety Code, for the above-
17 listed violations, Kern Oil is liable for the assessment of civil penalties of not more than \$10,000
18 for each day in which a violation occurs.

19 **THIRD CLAIM FOR RELIEF**
20 (EPCRA – Failure to Submit Form Rs)
 (Federal Claim Only)

21 76. Paragraphs 1 through 65, above, are realleged and incorporated herein by
22 reference.
23

1 77. During calendar year 2009, Kern Oil *process[ed]* (as that term is defined in 40
2 C.F.R. § 372.3) at the Kern Oil Refinery the following amounts of toxic chemicals listed in 40
3 C.F.R. § 372.65: (i) 22,804,617 pounds of 1,2,4 trimethylbenzene; (ii) 2,109 pounds of
4 benzo(g,h,i)perylene; (iii) 760 pounds of lead compounds; (iv) 14,714 pounds of mercury
5 compounds; and (v) 3,408,793 pounds of naphthalene. Each of these quantities exceeded the
6 threshold established under Section 313(f) of EPCRA, 40 U.S.C. § 11023(f), and 40 C.F.R.
7 §§ 372.25 or 372.28.

8 78. During calendar year 2009, Kern Oil *otherwise use[d]* (as that term is defined in
9 40 C.F.R. § 372.3) at the Kern Oil Refinery the following amount of toxic chemicals listed in 40
10 C.F.R. § 372.65: 13,665 pounds of molybdenum trioxide. This quantity exceeded the threshold
11 established under Section 313(f) of EPCRA, 40 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

12 79. During calendar year 2010, Kern Oil *process[ed]* (as that term is defined in 40
13 C.F.R. § 372.3) at the Kern Oil Refinery the following amounts of toxic chemicals listed in 40
14 C.F.R. § 372.65: (i) 21,707,183 pounds of 1,2,4 trimethylbenzene; (ii) 2,096 pounds of
15 benzo(g,h,i)perylene; (iii) 755 pounds of lead compounds; (iv) 14,620 pounds of mercury
16 compounds; and (v) 3,386,950 pounds of naphthalene. Each of these quantities exceeded the
17 threshold established under Section 313(f) of EPCRA, 40 U.S.C. § 11023(f), and 40 C.F.R.
18 §§ 372.25 or 372.28.

19 80. During calendar year 2011, Kern Oil *process[ed]* (as that term is defined in 40
20 C.F.R. § 372.3) at the Kern Oil Refinery the following amounts of toxic chemicals listed in 40
21 C.F.R. § 372.65: (i) 23,252,036 pounds of 1,2,4 trimethylbenzene; (ii) 2,095 pounds of
22 benzo(g,h,i)perylene; (iii) 755 pounds of lead compounds; (iv) 14,618 pounds of mercury
23 compounds; (v) 3,386,476 pounds of naphthalene; and (vi) 19,316,071 pounds of cyclohexane.

1 Each of these quantities exceeded the threshold established under Section 313(f) of EPCRA, 40
2 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25 or 372.28.

3 81. Kern Oil violated EPCRA by failing to submit to EPA and the State of California
4 a Form R for each of the following toxic chemicals processed or otherwise used at the Kern Oil
5 Refinery by July 1 in the year following each of the listed years: (i) 1,2,4 trimethylbenzene in
6 2009, 2010, and 2011; (ii) benzo(g,h,i)perylene for 2009, 2010, and 2011; (iii) lead compounds
7 for 2009, 2010, and 2011; (iv) mercury compounds for 2009, 2010, and 2011; (v) naphthalene
8 for 2009, 2010, and 2011; (vi) molybdenum trioxide for 2009; and (vii) cyclohexane for 2011.

9 82. As a result of the above-listed violations and pursuant to Section 325(c) of
10 EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, Kern Oil is liable for the assessment of
11 civil penalties for violations through the present as follows: (i) not more than \$37,500 per
12 violation per day for each violation that occurred after January 12, 2009, through November 2,
13 2015; and (ii) not more than \$57,317 per violation per day for each violation that occurred after
14 November 2, 2015.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, based on the allegations set forth above, Plaintiffs request that this Court:

- 17 a. For all Clean Air Act violations, award the United States civil penalties of
18 up to \$37,500 per violation per day for each violation that occurred after
19 January 12, 2009, through November 2, 2015; and up to \$99,681 per
20 violation per day for each violation that occurred after November 2, 2015;
- 21 b. For all EPCRA violations, award the United States civil penalties of up to
22 \$37,500 per violation per day for each violation that occurred after

1 January 12, 2009, through November 2, 2015; and up to \$57,317 per
2 violation per day for each violation that occurred after November 2, 2015;

3 c. For all Clean Air Act violations, award SJVUAPCD civil penalties of up
4 to \$10,000 per violation per day;

5 d. Order Defendant to take appropriate steps as may be necessary to remedy
6 the violations;

7 e. Award Plaintiffs their costs and expenses in this action; and

8 f. Grant such other relief as the Court deems just and proper and as the
9 public interest and the equities of the case may require.

10
11 Respectfully Submitted,

12 **FOR THE UNITED STATES OF AMERICA:**

13
14 12/9/19

15 

16 ELLEN M. MAHAN
17 Deputy Section Chief
18 Environmental Enforcement Section
19 Environment and Natural Resources Division
20 U.S. Department of Justice

21 

22 LORI JONAS
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FOR THE UNITED STATES OF AMERICA (cont.):



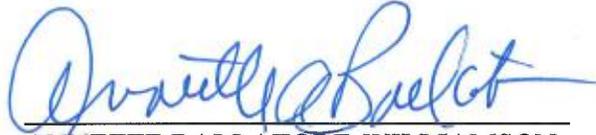
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**FOR THE SAN JOAQUIN VALLEY UNIFIED
AIR POLLUTION CONTROL DISTRICT:**



ANNETTE BALLATORE-WILLIAMSON
District Counsel
San Joaquin Valley Unified Air Pollution Control District
1990 East Gettysburg Avenue
Fresno, California 93726
Telephone: (559) 230-6033

CIVIL COVER SHEET

Case 2:19-cv-02460-KJM-CKD Document 1-1 Filed 12/09/19 Page 1 of 1

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America, and San Joaquin Valley Unified Air Pollution Control District

(b) County of Residence of First Listed Plaintiff Kern (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) E.Mahan, L.Jonas, ENRD, DOJ, P.O. Box 7611, Ben Franklin Station, DC 20044 (202) 514-4080; M.Belz, USAO, 501 I St., Ste. 10-100, Sacramento CA 95814 (916) 554-2758; A. Williamson (for San Joaquin Valley Unified Air Pollution Control Dist.), 1990 E. Gettysburg Ave., Fresno CA 93726; (559) 230-6033

DEFENDANTS

Kern Oil & Refining Co.

County of Residence of First Listed Defendant Kern (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Craig Moyer, Manatt, Phelps & Phillips, LLP, 11355 W. Olympic Blvd., Los Angeles, CA 90064 (310-312-4553)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Clean Air Act, 42 USC 7413(b); Emerg. Planning & Community Right-To-Know Act, 42 USC 11045(c) ("EPCRA")

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/09/2019 SIGNATURE OF ATTORNEY OF RECORD Matthew R. Belz

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE