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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

COMPLAINT

Civil Action No. _____

HOLLYFRONTIER REFINING &
MARKETING LLC, FRONTIER EL
DORADO REFINING, LLC, HOLLY
REFINING & MARKETING,
COMPANY – WOODS CROSS LLC, AND
NAVAJO REFINING COMPANY, L.L.C.,

Defendants.

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

STATEMENT OF THE CASE

1. This is an action for injunctive relief and civil penalties brought by Plaintiff against HollyFrontier Refining & Marketing LLC, Frontier El Dorado Refining LLC, Holly Refining & Marketing Company – Woods Cross LLC, and Navajo Refining Company, L.L.C., as described below, under the Clean Air Act (“CAA”), Title II, Sections 205(b) and 211(d), as amended, 42 U.S.C. §§ 7524(b) and 7545(d), for violations of Section 211(h) of the CAA, 42 U.S.C. §7545(h), and the regulations promulgated thereunder and published at 40 C.F.R. Part 80 (the “fuels regulations”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter and the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 205(b) and 211(d) of the CAA, 42 U.S.C. §§ 7524(b) and 7545(d).

3. Under Sections 205(b) and 211(d) of the CAA, 42 U.S.C. §§ 7524(b) and 7545(d), this Court is authorized to assess civil penalties for violations of Section 211(h) of the CAA, 42 U.S.C. § 7545(h), and the regulations promulgated thereunder.

4. Under Section 211(d)(2) of the CAA, 42 U.S.C. § 7545(d)(2), this Court is authorized to restrain violations of Section 211(h) of the CAA, 42 U.S.C. § 7545(h), and the regulations promulgated thereunder.

5. Venue in this District is proper pursuant to Section 205 of the CAA, 42 U.S.C. § 7524, because the Administrator’s principal place of business is in the District of Columbia.

AUTHORITY

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

THE PARTIES

7. Plaintiff United States of America is acting on behalf of the EPA.

8. HollyFrontier Refining & Marketing LLC (“Holly R&M”) is a Delaware limited liability company with its principal place of business at 100 Crescent Court, Suite 1600, Dallas, Texas.

9. Frontier El Dorado Refining LLC (“El Dorado”) is a Delaware limited liability company and owns or operates a refinery located at 1401 Douglas Road, El Dorado, Kansas.

10. Holly Refining & Marketing Company – Woods Cross LLC (“Woods Cross”) is a Delaware limited liability company and owns or operates a refinery located at 393 South 800 West, Woods Cross, Utah.

11. Navajo Refining Company, L.L.C. (“Navajo”) is a Delaware limited liability company and owns or operates a refinery located at 501 E. Main Street, Artesia, New Mexico.

12. Holly R&M, El Dorado, Woods Cross, and Navajo are collectively referred to herein as the “Defendants.”

STATUTORY AND REGULATORY PROVISIONS

Volatility Standards

13. Section 108 of the CAA, 42 U.S.C. § 7408, requires the EPA to promulgate a list of air pollutants, and issue air quality criteria for each air pollutant, the emissions of which may reasonably be anticipated to endanger the public’s health or welfare and the presence of which

results from numerous and diverse mobile or stationary sources. 42 U.S.C. § 7408(a)(1)(A) and (B). Pollutants identified under Section 108 of the CAA, 42 U.S.C. § 7408, are called “criteria pollutants.”

14. Section 109 of the CAA, 42 U.S.C. § 7409, requires the EPA to publish regulations establishing primary and secondary ambient air quality standards for criteria pollutants that are protective of the public health and public welfare. 42 U.S.C. § 7409(a) and (b). These standards are known as National Ambient Air Quality Standards (“NAAQS”).

15. The EPA has promulgated NAAQS for six criteria pollutants, including, among others, ozone. See, 40 C.F.R. § 50.15.

16. Under Section 107(d) of the CAA, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular criteria pollutant is an “attainment” area. An area that does not meet the NAAQS for a particular criteria pollutant is a “nonattainment” area. An area that cannot be classified due to insufficient data is “unclassifiable.”

17. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to the EPA for approval a State Implementation Plan (“SIP”) that provides for the attainment and maintenance of the NAAQS in each air quality control region within each state. Upon the EPA’s approval, the Texas SIP requirements become enforceable by Texas and are federally enforceable under Section 113 of the CAA, 42 U.S.C. §§ 7413(a), (b).

18. Under Section 211(c)(4)(C) of the CAA, 42 U.S.C. § 7545(c)(4)(C), a State may request a waiver from the EPA to adopt a state fuel program that is more stringent than federal requirements into its federally-approved SIP.

19. On May 22, 1997, the EPA granted a waiver to the State of Texas which adopted the El Paso Low Reid Vapor Pressure Program into the Texas SIP. See, 62 Fed. Reg. 27964 (May 22, 1997). Under the SIP, from May 1st through September 16th of each year no person shall place, store, hold, transfer, or allow the transfer of any gasoline which may ultimately be used in a motor vehicle in the El Paso, Texas, area that either: (a) has a Reid Vapor Pressure (“RVP”) greater than 7.0 pounds per square inch absolute (“psia”); or (b) does not meet the EPA specifications for reformulated gasoline. See, Texas Annotated Code §§ 115.252- 115.259.

20. Upon 30 days prior notice to an affected state, the EPA may, among other things, institute a civil action to enforce a state’s SIP requirements. Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a).

21. Evaporative hydrocarbon emissions from gasoline contribute to the formation of ground-level ozone, a criteria pollutant. Gasoline’s tendency to evaporate (volatility) is measured in terms of pounds per square inch (“psi”) of RVP. The EPA regulates the vapor pressure of gasoline to reduce evaporative emissions from gasoline that contributes to ground-level ozone and decreases the effects of ozone-related health problems.¹

22. The EPA is authorized to promulgate regulations that control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel for use in a motor vehicle if, in the EPA’s judgment: (a) that fuel causes, or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare; or (b) the emission products of the fuel will significantly impair emissions control systems in general use or emissions control systems that will be in general use were the fuel control to be adopted. See, 42 U.S.C. § 7545(c).

¹ PSI and PSIA refer to the same unit of measurement but that measurement is referred to differently under, respectively, the federal regulations and the Texas SIP.

23. Section 211 of the CAA, 42 U.S.C. § 7545, and the regulations promulgated thereunder, set forth fuel quality and emissions standards which must be met by refiners and requires refiners to sample and test the fuel that they produce, to keep fuel production records, and to submit reports to the EPA to demonstrate that the fuel produced complies with requirements set forth in Section 211 of the CAA.

24. Section 211(h)(1) of the CAA, 42 U.S.C. § 7545(h)(1), requires the EPA to promulgate regulations making it unlawful for any person during the high ozone season (as defined by the EPA) to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline that exceeds the applicable RVP standard. The resulting EPA regulations are known as the “volatility regulations” and are found at 40 C.F.R. § 80.27.

25. For the period 1992 and later, the EPA set the RVP standard at 9.0 psi for designated volatility attainment areas (40 CFR § 80.27(a)(2)(i)) and set the RVP standard at 7.8 psi for certain designated volatility nonattainment areas (40 C.F.R. § 80.27(a)(2)(ii)).

26. A designated volatility nonattainment area is an area that is designated as being in nonattainment with the NAAQS for ozone pursuant to rulemaking under Section 107(d)(4)(A)(ii) of the CAA, and a designated volatility attainment area is an area not designated as being in nonattainment with the NAAQS for ozone. See, 40 C.F.R. §§ 80.2(cc) and 80.2(dd), respectively.

27. Designations and exact boundaries of the ozone nonattainment areas subject to the 7.8 psi RVP standard were published in the November 6, 1991, notice that designated areas under Section 107(d)(4)(A)(ii). See, Air Quality Designations and Classifications; 56 Fed. Reg. 56,694 (Nov. 6, 1991) (codified at 40 C.F.R. pt. 81 (1991)).

28. The 7.8 psi RVP standard set forth in the state-by-state RVP Table at 40 C.F.R. § 80.27(a)(2)(ii) applies to the nonattainment areas identified in the ozone NAAQS designation and

classifications at 56 Fed. Reg. 56,694, which was codified at 40 C.F.R. pt. 81 in November 1991. The 9.0 psi RVP standard applies to conventional gasoline in all other areas of the lower 48 states not covered by either the 7.8 psi RVP federal volatility requirement or an EPA approved SIP.

29. 40 C.F.R. § 80.27(a)(2) mandates that during the 1992 and later regulatory control periods no person shall sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline whose RVP exceeds the applicable standards set forth in 40 C.F.R. § 80.27(a)(2)(i) or (ii).

30. Section 211(d)(1) of the CAA, 42 U.S.C. § 7545(d)(1), provides, in part, that any person who violates the volatility requirements prescribed under Section 211(h), 42 U.S.C. § 7545(h), shall be liable for a civil penalty of up to \$25,000 per day for each day of violation, plus the amount of economic benefit or savings resulting from the violation. Under 40 C.F.R. § 19.4, the amounts of civil penalties for these violations increased to \$32,500 per day, plus the amount of any economic benefit or savings resulting from those violations, for violations that occurred from March 15, 2004, through January 12, 2009, and up to \$37,500 per day, plus the amount of any economic benefit or savings resulting from those violations, for violations that occurred after January 12, 2009.

Sampling and Testing Requirements

31. 40 C.F.R. § 80.27(b) requires that compliance with the standards listed in 40 C.F.R. § 80.27(a) shall be determined by the use of the testing methodology specified in 40 C.F.R. § 80.46(c).

32. 40 C.F.R. § 80.101(i) requires refiners to collect and analyze a representative sample of each batch of conventional gasoline that they produce for the purpose of determining

compliance with the applicable emissions standards by using the test methods set forth in 40 C.F.R. § 80.46.

33. 40 C.F.R. § 80.46(c) requires that RVP must be determined using ASTM standard test method ASTM D5191, except that the EPA correlation equation specified in the regulations must be used.

GENERAL ALLEGATIONS

34. At all relevant times, each Defendant was a corporation or an association and therefore a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

35. 40 C.F.R. § 80.2(h) defines a “refinery” to mean any facility, including but not limited to, a plant, tanker truck, or vessel where gasoline is produced, including any facility at which blendstocks are combined to produce gasoline, or at which blendstock is added to gasoline. The facilities operated by El Dorado, Woods Cross, and Navajo identified, respectively, in Paragraphs 10, 11 and 12, above, are refineries within the meaning of 40 C.F.R. § 80.2(h).

36. At all relevant times, each Defendant was a “refiner” within the meaning of 40 C.F.R. § 80.2(i), which defines a “refiner” as any person who owns, leases, operates, controls, or supervises a refinery.

37. Pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), the EPA notified the State of Texas of its intention to file this Complaint and enforce certain requirements of the Texas SIP.

FIRST CLAIM FOR RELIEF

(Navajo RVP Violations in El Paso, Texas)

38. Paragraphs 1 through 37 are re-alleged and incorporated by reference.

39. Texas has an EPA-approved waiver that adopts into its federally approved SIP a state fuel program that is more stringent than the federal requirements. See, 62 Fed. Reg. 27964

(May 22, 1997). Under that SIP, from May 1 through September 16, no person shall place, store, hold, transfer or allow the transfer of any gasoline which may ultimately be used in a motor vehicle in the El Paso, Texas area with an RVP greater than 7.0 psia or that does not meet EPA specifications for reformulated gasoline. See, Texas Annotated Code §§ 115.252- 115.259.

40. From 2006 through 2010, one or more of the Defendants violated the Texas SIP's RVP standard at the Navajo refinery by producing approximately 10,971,072 gallons of gasoline intended for sale in El Paso, Texas, that exceeded the 7.0 psia RVP standard. See also, Section 211(h)(1) of the CAA, 42 U.S.C. § 7545(h), 40 C.F.R. § 80.27(a)(2)(ii) and Air Quality Designations and Classifications; 56 Fed. Reg. 56,694 (Nov. 6, 1991) (codified at 40 C.F.R. pt. 81 (1991)).

41. Under Sections 211(d)(1) and (2) of the CAA , 42 U.S.C. § 7545(d)(1) and (2), and 40 C.F.R. § 19.4, the violations set forth above subject one or more of the Defendants to injunctive relief and civil penalties of up to \$32,500 per day, plus the amount of any economic benefit or savings resulting from those violations, for violations that occurred from March 15, 2004 through January 12, 2009, and up to \$37,500 per day, plus the amount of any economic benefit or savings resulting from those violations, for violations that occurred after January 12, 2009.

SECOND CLAIM FOR RELIEF

(Woods Cross RVP Violations in Davis/Salt Lake, Utah)

42. Paragraphs 1 through 41 are re-alleged and incorporated by reference.

43. The volatility standard for gasoline intended for sale in Davis/Salt Lake, Utah, from June 1 to September 15 is 7.8 psi. See 40 C.F.R. § 80.27(a)(2)(ii) and Air Quality Designations and Classifications; 56 Fed. Reg. 56,694 (Nov. 6, 1991) (codified at 40 C.F.R. pt. 81 (1991)).

44. From 2006 through 2010, one or more of the Defendants violated Section 211(h)(1) of the CAA, 42 U.S.C. § 7545(h)(1), by producing at the Woods Cross refinery approximately 11,100,164 gallons of gasoline intended for sale in Davis/Salt Lake, Utah, that exceeded the 7.8 psi RVP standard. See, 40 C.F.R. § 80.27(a)(2)(ii) and Air Quality Designations and Classifications; 56 Fed. Reg. 56,694 (Nov. 6, 1991) (codified at 40 C.F.R. pt. 81 (1991)).

45. Under Sections 211(d)(1) and (2) of the CAA, 42 U.S.C. § 7545(d)(1) and (2), and 40 C.F.R. § 19.4, the violations set forth above subject one or more of the Defendants to injunctive relief and civil penalties of up to \$32,500 per day, plus the amount of any economic benefit or savings resulting from those violations, for violations that occurred from March 15, 2004 through January 12, 2009, and up to \$37,500 per day, plus the amount of any economic benefit or savings resulting from those violations, for violations that occurred after January 12, 2009.

THIRD CLAIM FOR RELIEF

(Navajo and Woods Cross RVP Violations in Arizona, New Mexico, and Idaho)

46. Paragraphs 1 through 45 are re-alleged and incorporated by reference.

47. The volatility standard for gasoline intended for sale in Arizona, New Mexico, and Idaho from May 1 to September 15 is 9.0 psi. See, 40 C.F.R. § 80.27(a)(2)(i).

48. From 2006 through 2010, one or more of the Defendants violated Section 211(h)(1) of the CAA, 42 U.S.C. § 7545(h)(1), by producing approximately at the Navajo or Woods Cross refinery 18,010,692 gallons of gasoline intended for sale in the Arizona, New Mexico, or Idaho markets that exceeded the 9.0 psi RVP standard.

49. Under Sections 211(d)(1) and (2) of the CAA, 42 U.S.C. § 7545(d)(1) and (2), and 40 C.F.R. § 19.4, the violations set forth above subject one or more of the Defendants to injunctive relief and civil penalties of up to \$32,500 per day, plus the amount of any economic benefit or

savings resulting from those violations, for violations that occurred from March 15, 2004 through January 12, 2009, and up to \$37,500 per day, plus the amount of any economic benefit or savings resulting from those violations, for violations that occurred after January 12, 2009.

FOURTH CLAIM FOR RELIEF

(El Dorado RVP Violations in Kansas)

50. Paragraphs 1 through 49 are re-alleged and incorporated by reference.

51. The volatility standard for gasoline intended for sale in Kansas from May 1 to September 15 is 9.0 psi. See, 40. C.F.R. § 80.27(a)(2)(i).

52. In 2011, the Defendants violated Section 211(h)(1) of the CAA, 42 U.S.C. § 7545(h), by producing at the El Dorado refinery approximately 1,206,660 gallons of gasoline for sale in Kansas that exceeded the 9.0 psi RVP standard. See, 40. C.F.R. § 80.27(a)(2)(ii).

53. Under Sections 211(d)(1) and (2) of the CAA, 42 U.S.C. § 7545(d)(1) and (2), and 40 C.F.R. § 19.4, the violations set forth above subject one or more of the Defendants to injunctive relief and civil penalties of up to \$32,500 per day, plus the amount of any economic benefit or savings resulting from those violations, for violations that occurred from March 15, 2004 through January 12, 2009, and up to \$37,500 per day, plus the amount of any economic benefit or savings resulting from those violations, for violations that occurred after January 12, 2009.

FIFTH CLAIM FOR RELIEF

(Woods Cross RVP Violations in Davis/Salt Lake, Utah)

54. Paragraphs 1 through 53 are re-alleged and incorporated by reference.

55. The volatility standard for gasoline intended for sale in Davis/Salt Lake, Utah, from June 1 to September 15 is 7.8 psi. See 40 C.F.R. § 80.27(a)(2)(ii) and Air Quality Designations and Classifications; 56 Fed. Reg. 56,694 (Nov. 6, 1991) (codified at 40 C.F.R. pt. 81 (1991)).

56. In 2011, one or more of the Defendants violated Section 211(h)(1) of the CAA, 42 U.S.C. § 7545(h)(1), by producing at the Woods Cross refinery approximately 998,975 gallons of gasoline intended for sale in Davis/Salt Lake, Utah, that exceeded the 7.8 RVP standard. See 40 C.F.R. § 80.27(a)(2)(ii) and Air Quality Designations and Classifications; 56 Fed. Reg. 56,694 (Nov. 6, 1991) (codified at 40 C.F.R. pt. 81 (1991)).

57. Under Sections 211(d)(1) and (2) of the CAA , 42 U.S.C. § 7545(d)(1) and (2), and 40 C.F.R. § 19.4, the violations set forth above subject one or more Defendants to injunctive relief and civil penalties of up to \$32,500 per day, plus the amount of any economic benefit or savings resulting from those violations, for violations that occurred from March 15, 2004 through January 12, 2009, and up to \$37,500 per day, plus the amount of any economic benefit or savings resulting from those violations, for violations that occurred after January 12, 2009.

SIXTH CLAIM FOR RELIEF

(RVP Testing Violations)

58. Paragraphs 1 through 57 are re-alleged and incorporated by reference.

59. 40 C.F.R. § 80.27(b) requires that compliance with the standards listed in 40 C.F.R. § 80.27(a) shall be determined by the use of the testing methodology specified in 40 C.F.R. § 80.46(c). 40 C.F.R. § 80.101(i) requires refiners to collect and analyze a representative sample of each batch of conventional gasoline that they produce for the purpose of determining compliance with the applicable emissions standards by using the test methods set forth in 40 C.F.R. § 80.46. 40 C.F.R. § 80.46(c) requires that RVP must be determined using ASTM standard test method ASTM D5191, except that the EPA correlation equation specified in the regulations must be used.

60. From 2006 through 2010, one or more of the Defendants violated 40 C.F.R. § 80.101(i) and 40 C.F.R. § 80.46(c) by failing to use the EPA correlation equation specified in the regulations for 732 batches of gasoline it produced at the Woods Cross Refinery.

61. In August 2011, one or more of the Defendants violated 40 C.F.R. § 80.101(i) and 40 C.F.R. § 80.46(c) by failing to use the EPA correlation equation specified in the regulations for 16 batches of gasoline it produced at the El Dorado Refinery.

62. In 2011, one or more of the Defendants violated 40 C.F.R. § 80.101(i) and 40 C.F.R. § 80.46(c) by failing to use the EPA correlation equation specified in the regulations for 4 batches of gasoline it produced at the Woods Cross Refinery.

63. Under Sections 211(d)(1) and (2) of the CAA, 42 U.S.C. § 7545(d)(1) and (2), and 40 C.F.R. § 19.4, the violations set forth above subject one or more of the Defendants to injunctive relief and civil penalties of up to \$32,500 per day, plus the amount of any economic benefit or savings resulting from those violations, for violations that occurred from March 15, 2004 through January 12, 2009, and up to \$37,500 per day, plus the amount of any economic benefit or savings resulting from those violations, for violations that occurred after January 12, 2009.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that this Court enter judgment against Defendants:

A. Impose under Section 211(d) of the CAA , 42 U.S.C. § 7545(d), a civil penalty against each Defendant for its violations of Section 211(h) of the CAA , 42 U.S.C. § 7545(h), and the fuels regulations, alleged herein, of up to \$32,500 per day, plus the amount of economic benefit or savings resulting from each violation, for violations that occurred between March 15, 2004, and January 12, 2009, and \$37,500 per day, plus the amount of economic benefit or savings resulting from each violation, for violations that occurred after January 12, 2009;

B. Enjoin each Defendant from committing any further violations of the CAA and regulations promulgated thereunder, under Section 211(d)(2) of the CAA, 42 U.S.C. § 7545(d)(2);

C. Require each Defendant to take appropriate action to mitigate any excess emissions from the violations alleged above;

D. Award the United States its costs of this action; and

E. Grant the United States such other relief as the Court deems just and proper

Respectfully Submitted,

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Dated: November 19, 2015.


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CERTIFICATE OF MAILING (CM/ECF)

I hereby certify that on November 19, 2015, I electronically filed the foregoing Civil Cover Sheet and Complaint with the Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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