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UNITED STATES OF AMERICA

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

UNITED STATES OF AMERICA

Plaintiff

v.

ALOHA PETROLEUM, LTD.,

Defendant.

Civ. No.

COMPLAINT

The United States of America, 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”), by and through the undersigned attorneys, alleges as follows:

NATURE OF ACTION

1. This is a civil action brought under Section 113(b) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b), for injunctive relief and the assessment of civil penalties against Aloha Petroleum, Ltd. (“Defendant”), for violations of the CAA and the regulations promulgated thereunder at its bulk gasoline terminal located at 999 Kalanianaʻole Avenue in Hilo, Hawaii (“Hilo Terminal”). Additional claims are brought under Sections 309 and 311 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319 and 1321, for injunctive relief and the assessment of civil penalties against Defendant for violation at the Hilo Terminal of the CWA and the regulations promulgated thereunder.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action under Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E); and 28 U.S.C. §§ 1331, 1345, 1355 and 1395(a).

3. Venue is proper in this judicial district under Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E); and 28 U.S.C. §§ 1391 and 1395, because it is the judicial district in which Defendant’s corporate headquarters is located and the violations alleged in this Complaint have occurred and are occurring.

AUTHORITY AND NOTICE

4. Authority to bring this action is vested in the United States Department of

Justice under Section 305 of the CAA, 42 U.S.C. § 7605; Section 506 of the CWA, 33 U.S.C. § 1366; and 28 U.S.C. §§ 516 and 519.

5. Notice of the commencement of this action has been given to the Hawaii Department of Health, as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

PARTIES

6. Plaintiff is the United States of America, acting at the request and on behalf of the EPA Administrator.

7. Defendant Aloha Petroleum, Ltd., is a Hawaii corporation with its corporate headquarters located in Honolulu, Hawaii.

8. Defendant, as a corporation, is a “person” within the definitions set forth in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

STATUTORY AND REGULATORY FRAMEWORK

9. The primary purpose of the CAA 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).

10. Section 111(b)(1) of the CAA, 42 U.S.C. § 7411(b)(1), required EPA’s 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. 36 Fed. Reg. 24,877. The NSPS General Provisions include 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.

12. On August 18, 1983, EPA promulgated the NSPS for “Bulk Gasoline Terminals,” codified at 40 C.F.R. Part 60, Subpart XX (“Bulk Terminal NSPS”). 48 Fed. Reg. 37,590. The Bulk Terminal NSPS applies to the total of all the loading racks at a bulk gasoline terminal that deliver liquid product into gasoline tank trucks if the construction, reconstruction, or modification of the affected facility is commenced after December 17, 1980. 40 C.F.R. §§ 60.15, 60.500(a)-(b), 60.506.

13. The NSPS General Provisions and the Bulk Terminal NSPS require the owner or operator of a bulk gasoline terminal to conduct performance tests within 60 days after achieving the maximum production rate at which the loading racks will be operated, but not later than 180 days after the initial startup of the loading racks. 40 C.F.R. §§ 60.8, 60.503.

14. The Bulk Terminal NSPS requires the owner or operator of each bulk gasoline terminal to equip the loading racks with a vapor collection system designed to collect the total organic compounds vapors displaced from tank trucks during product loading. 40 C.F.R. § 60.502(a). The emissions to the atmosphere from the vapor collection system must not exceed 35 milligrams of total organic compounds per liter of gasoline loaded. 40 C.F.R. § 60.502(b). The owner or operator must comply with these requirements on and after the date on which the

performance test is required to be completed. 40 C.F.R. § 60.502.

15. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), makes it unlawful for any owner or operator of any new source to operate such source in violation of any applicable NSPS.

16. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), EPA's Administrator is authorized to commence a civil action for appropriate relief, including injunctive relief and civil penalties, against any person who has violated or is in violation of any requirement or prohibition of any rule promulgated under Section 111 of the CAA, 42 U.S.C. § 7411.

17. The CWA was enacted to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits, except as otherwise authorized, the "discharge of any pollutant," including oil, by any person. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source." Oil is a pollutant within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6). "Navigable waters" are defined pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7), to mean "the waters of the United States, including the territorial seas."

18. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), further prohibits the discharge of oil into or upon the navigable waters of the United States and adjoining shorelines in such quantities as the President determines may be harmful to the public health or welfare or

environment of the United States. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore . . . facilities, and to contain such discharges. . . .”

19. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA the authority under Section 311(j)(5) of the CWA to issue the regulations referenced in Section 311(j)(1)(C) of the CWA for non-transportation-related onshore facilities.

20. Pursuant to this delegated statutory authority, EPA promulgated the Oil Pollution Prevention regulations at 40 C.F.R. Part 112. The Oil Pollution Prevention regulations set forth certain procedures, methods and requirements for each owner and operator of a facility that, due to its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines. 40 C.F.R. § 112.1(a)(1).

21. A facility subject to the Oil Pollution Prevention regulations must provide for secondary containment for its primary oil storage vessels that is “constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system until cleanup occurs.” 40 C.F.R. § 112.7(c). Additionally, the Oil Pollution Prevention regulations require that the facility owner must “ensure that diked areas are sufficiently impervious to contain discharged oil.” 40 C.F.R. § 112.8(c).

22. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), EPA's administrator is authorized to commence a civil action for civil penalties against any person who fails or refuses to comply with any regulation issued under Section 311(j) of the CWA, 33 U.S.C. § 1321(j). This Court possesses the inherent authority to order injunctive relief against any such person.

GENERAL ALLEGATIONS

The Hilo Terminal

23. In or about 1960, Texaco Refining and Marketing, Inc. ("Texaco"), built the Hilo Terminal, which is located at 999 Kalaniana'ole Avenue, in Hilo, Hawaii.

24. Refined petroleum products (e.g., gasoline and diesel) are transferred via pipelines from a local marine port to the Hilo Terminal storage tanks. The Hilo Terminal then distributes these products by pipelines from its storage tanks to its loading rack, where the products are loaded into tank trucks.

25. The Hilo Terminal has a maximum calculated design throughput greater than 75,700 liters of gasoline per day.

26. The Hilo Terminal is a "stationary source" within the meaning of Section 111(a)(3) of the CAA, 42 U.S.C. § 7411(a)(3), because it is a "building, structure, facility or installation which emits or may emit any air pollutant," and a "bulk gasoline terminal" as that term is defined in 40 C.F.R. § 60.501 because it is a "gasoline facility which receives gasoline by pipeline, ship or barge, and has a gasoline throughput greater than 75,700 liters per day."

27. Since in or about 1999 to the present, Defendant has been an owner of the Hilo

Terminal equipment and the operator of the Hilo Terminal.

28. Defendant is an “owner or operator” of the Hilo Terminal within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5).

The Hilo Terminal Loading Rack

29. In or about 1960, Texaco built the Hilo Terminal loading rack.

30. In or about 2006, Defendant changed the Hilo Terminal loading rack (“2006 Project”). The 2006 Project is a “modification” within the meaning of Section 111(a)(4) of the CAA, 42 U.S.C. § 7411(a)(4), and as that term is defined in 40 C.F.R. §§ 60.2 and 60.14, because by adding a new ethanol line and replacing components of the two existing gasoline lines it involved a “physical change” in the Terminal and it increased the emission rate of an air pollutant emitted by the Terminal. The 2006 Project is also a “reconstruction” as that term is defined in 40 C.F.R. §§ 60.15 and 60.506, because the fixed capital costs of the new loading rack components exceeded 50 percent of the fixed capital costs that would have been required to construct a comparable new facility and it was technologically and economically feasible to meet the regulatory standards.

31. In or about 2008, Defendant changed the Hilo Terminal loading rack by replacing components of the existing diesel line and the two existing gasoline lines (“2008 Project”). The 2008 Project is a “modification” within the meaning of Section 111(a)(4) of the CAA, 42 U.S.C. § 7411(a)(4), and as that term is defined in 40 C.F.R. §§ 60.2 and 60.14, because it involved a “physical change” in the Terminal and it increased the emission rate of an air pollutant emitted by the Terminal. Upon information and belief, the 2008 Project is

also a “reconstruction” as that term is defined in 40 C.F.R. §§ 60.15 and 60.506, because the fixed capital costs of the new components exceeded 50 percent of the fixed capital costs that would have been required to construct a comparable new facility and it was technologically and economically feasible to meet the regulatory standards.

32. Taken together, the 2006 Project and the 2008 Project constitute both (i) a “modification” within the meaning of Section 111(a)(4) of the CAA, 42 U.S.C. § 7411(a)(4), and as that term is defined in 40 C.F.R. §§ 60.2 and 60.14; and (ii) a “reconstruction” as that term is defined in 40 C.F.R. §§ 60.15 and 60.506.

33. The loading rack at the Hilo Terminal is a “loading rack” as that term is defined in 40 C.F.R. § 60.501 because it consists of “loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves necessary to fill delivery tank trucks.” The Hilo Terminal is an “affected facility” (as that term is defined in 40 C.F.R. §§ 60.2 and 60.500) subject to the NSPS General Provisions and the Bulk Terminal NSPS because it consists of “the total of all the loading racks at a bulk gasoline terminal which deliver liquid product into gasoline tank trucks,” the construction, reconstruction, or modification of which was commenced after December 17, 1980.

34. Defendant is an “owner or operator” (as that term is defined in 40 C.F.R. § 60.2) of the Hilo Terminal loading rack. Upon information and belief, currently the Hilo Terminal is not operating.

Secondary Containment

35. The Hilo Terminal has a maximum above-ground oil storage capacity of

approximately 1,700,000 gallons, with each of the two largest individual tanks having a capacity of approximately 420,000 gallons. One-quarter mile from the Hilo Terminal is Puhī Bay, in Hilo, Hawaii, which is directly connected to the Pacific Ocean.

36. The tank farm areas of the Hilo Terminal are surrounded by concrete block and lava rock walls, with a natural lava rock foundation. The floor of the diked area is compressed gravel and soil; storm water, discharged oil or other liquids will permeate vertically due to the characteristics of the compressed gravel and soil.

37. On or about November 1, 2011, approximately 14,700 gallons of oil (diesel fuel) released into the diked secondary containment area within the primary tank storage area of the Hilo Terminal. Within hours and before the cleanup of the oil could occur, all but approximately 65 gallons of oil permeated through the containment floor.

FIRST CLAIM FOR RELIEF

(Failure to Equip Loading Rack with Pollution Controls)

38. Paragraphs 1 through 34, above, are realleged and incorporated herein by reference.

39. Since in or about 2006, the Hilo Terminal loading rack has been and continues to be operated without being equipped with a vapor collection system as required by the Bulk Terminal NSPS at 40 C.F.R. § 60.502(a).

40. At the Hilo Terminal, Defendant violated and continues to violate the Bulk Terminal NSPS loading rack vapor collection system requirements of 40 C.F.R. § 60.502(a).

41. Each violation of 40 C.F.R. § 60.502(a) at the Hilo Terminal subjects

Defendant to liability under the CAA.

42. Unless enjoined by an order of this Court, Defendant will continue to violate 40 C.F.R. § 60.502(a) at the Hilo Terminal.

43. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. Part 19, Defendant is liable for injunctive relief and civil penalties of not more than \$32,500 per day for each violation of 40 C.F.R. § 60.502(a) that occurred between March 16, 2004, and January 12, 2009; and of not more than \$37,500 per day for each violation of 40 C.F.R. § 60.502(a) that occurs after January 12, 2009.

SECOND CLAIM FOR RELIEF
(Failure to Limit Loading Rack Emissions)

44 Paragraphs 1 through 34, above, are realleged and incorporated herein by reference.

45. Since in or about 2006, Defendant failed to limit emissions from the loading of liquid product from the Hilo Terminal loading rack into gasoline tank trucks to not more than 35 milligrams of total organic compounds per liter of gasoline loaded as required by 40 C.F.R. § 60.502(b).

46. At the Hilo Terminal, Defendant violated and continues, when it operates, to violate the Bulk Terminal NSPS loading rack emission limit of 40 C.F.R. § 60.502(b).

47. Each violation of 40 C.F.R. § 60.502(b) at the Hilo Terminal subjects Defendant to liability under the CAA.

48. Unless enjoined by an order of this Court, Defendant will continue to violate 40 C.F.R. § 60.502(b) at the Hilo Terminal.

49. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. Part 19, Defendant is liable for injunctive relief and civil penalties of not more than \$32,500 per day for each violation of 40 C.F.R. § 60.502(b) that occurred between March 16, 2004, and January 12, 2009; and for not more than \$37,500 per day for each violation of 40 C.F.R. § 60.502(b) that occurs after January 12, 2009.

THIRD CLAIM FOR RELIEF
(Failure to Conduct Performance
Tests)

50. Paragraphs 1 through 34, above, are realleged and incorporated herein by reference.

51. Since in or about 2006 and/or in or about 2008, Defendant failed to conduct NSPS performance tests at the Hilo Terminal loading rack as required by 40 C.F.R. §§ 60.8 and 60.503.

52. At the Hilo Terminal, Defendant violated and continues to violate the NSPS performance testing requirements of 40 C.F.R. §§ 60.8 and 60.503.

53. Each violation of 40 C.F.R. §§ 60.8 or 60.503 at the Hilo Terminal subjects Defendant to liability under the CAA.

54. Unless enjoined by an order of this Court, Defendant will continue to violate 40 C.F.R. §§ 60.8 and 60.503 at the Hilo Terminal.

55. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R.

Part 19, Defendant is liable for injunctive relief and civil penalties of not more than \$32,500 per day for each violation of 40 C.F.R. §§ 60.8 or 60.503 that occurred between March 16, 2004, and January 12, 2009; and of not more than \$37,500 per day for each violation of 40 C.F.R. §§ 60.8 or 60.503 that occurs after January 12, 2009.

FOURTH CLAIM FOR RELIEF
(Insufficiently Impervious Secondary
Containment)

56. Paragraphs 1 through 37, above, are realleged and incorporated herein by reference.

57. Defendant has failed to provide for secondary containment for its primary oil storage vessels that is “constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system until cleanup occurs,” in violation of 40 C.F.R. § 112.7(c). Defendant also has failed to “ensure that diked areas are sufficiently impervious to contain discharged oil,” in violation of 40 C.F.R. § 112.8(c).

58. Each violation of 40 C.F.R. §§ 112.7(c) and 112.8(c) subjects Defendant to liability under the CWA.

59. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. §1321(b)(7)(C), and 40 C.F.R. Part 19, Defendant is liable for civil penalties of up to \$37,500 per day of any violation of the Oil Pollution Prevention regulations.

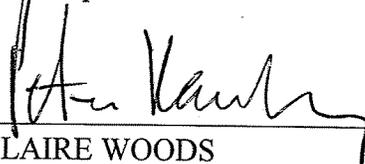
PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America respectfully prays that this Court:

- a. Permanently enjoin Defendant from operating the Hilo Terminal in violation of the CAA, including the NSPS General Provisions and the Bulk Terminal NSPS;
- b. Order Defendant to mitigate any excess emissions resulting from the violations;
- c. Assess civil penalties against Defendant of up to \$32,500 per day for each violation of the CAA between March 16, 2004, and January 12, 2009; and up to \$37,500 per day for each violation of the CAA after January 12, 2009.
- d. Permanently enjoin Defendant from operating the Hilo Terminal in violation of the CWA, including the Oil Pollution Prevention regulations;
- e. Assess civil penalties against Defendant of up to \$37,500 per day of violation of the CWA since at least November 1, 2011; and
- f. Grant such other and further relief as this Court deems just and proper.

Respectfully Submitted,

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