



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

CERTIFIED MAIL NO. 7000 0520 0025 3713 4775  
RETURN RECEIPT REQUESTED

IN REPLY: AIR-5

REFER TO: Docket No. CAA-09-2006-0021

William Garnett, Manager  
BR Hamakua, LLC, General Partner  
BR Landing, LLC, General Partner  
Hamakua Energy Partners, L.P.  
6000 Fairview Rd., Suite 600  
Charlotte, NC 28210

Dear Mr. Garnett:

Enclosed is a copy of a Complaint and Notice of Opportunity for Hearing ("Complaint") filed pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (1991) (the "Act"). The Complaint alleges that Hamakua Energy Partners, L.P. ("Hamakua") violated the New Source Performance Standards and certain conditions of its Prevention of Significant Deterioration Permit at its liquid fuel cogeneration power plant located at the Hamakua Sugar Mill in Haina, Hawaii (the "Facility"). These violations are set forth more specifically in the Complaint.

You should be aware of the part of the Complaint entitled "Opportunity to Request a Hearing." You are required to respond to this Complaint within thirty (30) days of receipt of the Complaint. If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, your failure shall constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing.

A copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties or Suspension of Permits is enclosed with the Complaint. The Clean Air Act Stationary Source Civil Penalty Policy is located at:  
<http://www.epa.gov/compliance/resources/policies/civil/caa/stationary/penpol.pdf>.

If you wish to discuss this Complaint or to continue ongoing settlement discussions, you may contact Charles Aldred, (415) 972-3986, of our Air Enforcement Office, or have your attorney contact Ivan Lieben, of the Office of Regional Counsel, at (415) 972-3914. Thank you for your cooperation in this matter.

Sincerely,



Deborah Jordan  
Director Air Division

Enclosures

cc w/enc: Wilfred Nagamine, HDOH

FILED

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
SAN FRANCISCO, CALIFORNIA

2006 SEP 25 AM 10:02

MR. JEFFREY GONIX  
REGIONAL HEARING CLERK

IN THE MATTER OF:	)	
	)	
Hamakua Energy Partners, L.P.	)	Docket No. CAA-09-2006- 0021
BR Landing, LLCC, and	)	
BR Hamakua, LLCC,	)	COMPLAINT AND
	)	OPPORTUNITY FOR HEARING
	)	
RESPONDENTS.	)	
_____	)	

PRELIMINARY STATEMENT

Complainant, the Director of the Air Division, United States Environmental Protection Agency ("EPA" or "Complainant"), Region IX, issues this Complaint and Notice of Opportunity for Hearing ("Complaint") against Respondents, Hamakua Energy Partners, L.P., and its general partners, BR Landing, LLCC and BR Hamakua, LLCC, (collectively "Hamakua"), pursuant to Section 113(d) of the Clean Air Act, as amended (the "Act" or "CAA"), 42 U.S.C. § 7413(d). The Administrator of EPA ("Administrator") delegated to the Regional Administrator of Region IX the authority to issue complaints such as this one in the state of Hawaii, and the Regional Administrator, in turn, re-delegated that authority to the Complainant. In addition, pursuant to Section 113(d) of the Act, the Administrator of EPA and the United States Attorney General have jointly determined that this matter is appropriate for civil administrative penalty action.

Complainant will show that Respondents violated the CAA at their liquid fuel cogeneration power plant located in Haina, Hawaii (the "Facility") by violating the conditions of their federally enforceable prevention of significant deterioration ("PSD") permit, including emissions limits for nitrogen oxides ("NO<sub>x</sub>") and requirements to continuously monitor carbon monoxide ("CO") and opacity and by failing to submit excess emissions reports to EPA on a quarterly basis, as required by the CAA's new source performance standards ("NSPS").

#### STATUTORY AND REGULATORY AUTHORITY

##### National Ambient Air Quality Standards

1. Pursuant to authority under Section 109 of the Act, 42 U.S.C. § 7409, the Administrator promulgated the national ambient air quality standards ("NAAQS") for certain criteria pollutants, including particulate matter ("PM<sub>10</sub>"), CO and nitrogen dioxide ("NO<sub>2</sub>"), codified at 40 C.F.R. §§ 50.7, 50.8 and 50.11.

2. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator also promulgated lists of attainment status designations for each air quality control region ("AQCR").

3. The Facility is located in Hawaii County, which at all

times relevant to this complaint has been designated as attainment/unclassifiable for the NAAQS for PM10, CO and NO<sub>2</sub>. 40 C.F.R. § 81.312.

#### Prevention of Significant Deterioration

4. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of primary and secondary NAAQS in the state. Upon approval by EPA, the plan becomes part of the state implementation plan ("SIP").

5. The Hawaii Department of Health ("DOH") has primary jurisdiction for crafting, implementing, and enforcing CAA program requirements, including SIP requirements, in Hawaii County.

6. Section 110(a)(2)(C) of the Act, 42 U.S.C. § 7410(a)(2)(C), requires that each "applicable implementation plan" include a PSD permit program as provided in Part C of Title I of the Act, 42 U.S.C. §§ 7470-7491. Part C, in part, requires the issuance of permits prior to the construction or operation of a new major source.

7. On June 19, 1978, pursuant to Sections 160 through 169 of the Act, 42 U.S.C. §§ 7470-7479, EPA promulgated PSD

regulations at 40 C.F.R. § 52.21. 43 Fed. Reg. 26,402.

8. The provisions of 40 C.F.R. §§ 52.21(b) through (w) were incorporated by reference and made part of the applicable "implementation plan" for the State of Hawaii at 40 C.F.R. § 52.632. 43 Fed. Reg. 26410 (June 19, 1978), as amended at 45 Fed. Reg. 527411 (Aug. 7, 1980), 68 Fed. Reg. 11316, 11322 (Mar. 10, 2003), 68 Fed. Reg. 74483, 74488 (Dec. 24, 2003).

9. The PSD regulations define a "major stationary source" to include, with some exception, any stationary source which emits or has the potential to emit ("PTE") 250 tons per year ("tpy") of any air pollutant subject to regulation under the Act. 40 C.F.R. § 52.21(b)(1)(i).

10. Under the PSD program, NO<sub>x</sub> levels are used as a surrogate for NO<sub>2</sub> levels. See, e.g., 40 C.F.R. § 52.21(b)(23)(i) (identifying NO<sub>x</sub> and not NO<sub>2</sub> as a pollutant for PSD purposes).

11. An owner or operator must obtain a PSD permit for all pollutants emitted in "significant" amounts before commencing construction of a new major stationary source. 40 C.F.R. §§ 52.21(j) and (r).

12. For pollutants emitted in significant amounts, the PSD permitting process requires, among other things, the application

of best available control technology to control emissions, 40 C.F.R. § 52.21(j); air quality modeling by the source, 40 C.F.R. 52.21(l); and a detailed impact analysis regarding both the NAAQS and allowable increments, 40 C.F.R. 52.21(k).

13. EPA originally delegated the authority to implement and enforce the federal PSD program and its implementing regulations to DOH on October 13, 1983, and amended the delegation on December 12, 1988. Under the delegation, DOH has the primary responsibility of issuing federally enforceable PSD permits pursuant to 40 C.F.R. § 52.21.

14. Failure to comply with the PSD regulations or any condition in a permit issued pursuant to such regulations, including any PSD permit issued by a delegated agency such as DOH, subjects the source to enforcement under Section 113 of the Act. 40 C.F.R. § 52.23.

#### **New Source Performance Standards**

15. Pursuant to Section 111 of the Act, 42 U.S.C. § 7411, the Administrator promulgated the NSPS General Provisions, 40 C.F.R. Part 60 Subpart A, on December 23, 1971, 36 Fed. Reg. 24877, as amended, and the NSPS Standards of Performance for Stationary Gas Turbines, 40 C.F.R. Part 60 Subpart GG, on







































