



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

APR 10 2006

CERTIFIED MAIL NO. 7004 1160 0004 3168 6104  
RETURN RECEIPT REQUESTED

IN REPLY: AIR-5  
REFER TO: Docket No. R9-06-03

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

Re: Hamakua Energy Partners, L.P. Notice of Violation

Dear Mr. Sanders:

Enclosed is a copy of a Finding and Notice of Violation ("NOV") issued pursuant to Sections 113(a)(1) and 113(a)(3) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (the "Act"), notifying you that the United States Environmental Protection Agency ("EPA"), Region IX, finds that Hamakua Energy Partners, L.P., and its general partners, BR Hamakua, LLC and BR Landing, LLC (collectively "Hamakua"), have violated certain requirements of a Prevention of Significant Deterioration permit and the New Source Performance Standards ("NSPS") at their liquid fuel cogeneration power plant located at Hamakua Sugar Mill in Haina, Hawaii (the "Facility").

You should be aware that section 113(a)(3) of the Act authorizes EPA to issue an order requiring compliance with the requirements of the Act, issue an administrative penalty order, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, section 113(c) of the Act provides for criminal penalties in certain cases.

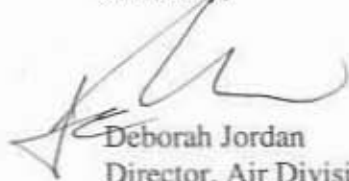
In addition, under section 306 of the Act, the regulations promulgated thereunder (40 CFR Part 32), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. Violation of the Act may result in the facility being declared ineligible for participation in any federal contract, grant, or loan.

If you wish to discuss the enclosed NOV, you may request a conference with EPA within ten (10) working days of receipt of this NOV. The conference will afford Hamakua an opportunity to present information bearing on the finding of violation, the nature of the violations, and any efforts it may have taken or proposes to take to achieve compliance.

If you have any questions pertaining to this NOV, please contact Charles Aldred of my office at (415) 972-3986, or have your attorney contact Ivan Lieben of the Office of Regional Counsel at (415) 972-3912.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Deborah Jordan', is written over the typed name.

Deborah Jordan  
Director, Air Division

Enclosure

cc: Wilfred Nagamine, Hawaii DOH  
Larry F. Kafchinski, Hamakua Energy Partners, L.P.



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REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

APR 10 2006

IN REPLY: AIR-5

REFER TO: Docket No. R9-06-03

Wilfred K. Nagamine  
Manager, Clean Air Branch  
Hawaii State Department of Health  
P.O. Box 3378  
Honolulu, HI 96801-9984

Re: Hamakua Energy Partners, L.P. Notice of Violation

Dear Mr. Nagamine:

Enclosed for your information is a copy of a Finding and Notice of Violation ("NOV") that the United States Environmental Protection Agency ("EPA") issued to Hamakua Energy Partners, L.P., and its general partners, BR Hamakua, LLC and BR Landing, LLC (collectively "Hamakua"), for violations at their liquid fuel cogeneration power plant located at Hamakua Sugar Mill in Haina, Hawaii (the "Facility").

The purpose of the NOV is to notify Hamakua that EPA finds that it has violated conditions in the Facility's Prevention of Significant Deterioration permit and the New Source Performance Standards requirements of the Clean Air Act ("Act"). The violations are set forth more specifically in the enclosed NOV. The NOV has been issued pursuant to Sections 113(a)(1) and 113(a)(3) of the Act, 42 U.S.C. §§ 7413(a)(1) and (a)(3).

If you have any questions concerning this NOV, please contact Charles Aldred of the Region 9 Air Division's Enforcement Office at (415) 972-3986.

Sincerely,



Deborah Jordan  
Director, Air Division

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

In the Matter of:	)	
	)	Docket No. R9-06-03
Hamakua Energy Partners, L.P.	)	
Honokaa, Hawaii	)	
	)	FINDING AND NOTICE
Proceeding Under Section	)	OF VIOLATION
113(a), Clean Air Act,	)	
as Amended	)	
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This Finding and Notice of Violation ("NOV") is issued to Hamakua Energy Partners, L.P., and its general partners, BR Landing, LLC and BR Hamakua, LLC (collectively "Hamakua"), for violations of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. §§ 7401-7671q, at their liquid fuel cogeneration power plant (the "Facility") located at Hamakua Sugar Mill, in Haina, Hawaii. This NOV is issued pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), which requires the Administrator of the United States Environmental Protection Agency ("EPA") to notify any person in violation of a state implementation plan ("SIP") or permit of the violations. EPA may also, at its discretion, provide notice to any person in violation of other CAA requirements pursuant to Section 113(a)(3) of the Act. The authority to issue this NOV has been delegated to the Regional Administrator of EPA, Region IX, and redelegated to the Director of the Air Division ("Director") of EPA, Region IX.

The Director hereby notifies you that the Facility has been and is in violation of conditions of its federally enforceable Prevent of Significant Deterioration ("PSD")/Covered Source Permit ("CSP") No. 0243-01-C, issued on June 8, 1998 and amended on September 5 and 28, 2000 (the "Permit"), including emissions limits for

nitrogen oxides ("NOx") and requirements to continuously monitor carbon monoxide ("CO") and opacity at the Facility. In addition, Hamakua has violated the Act by failing to comply with New Source Performance Standards ("NSPS") requirements requiring submission of excess emissions reports to EPA.

### **STATUTORY AND REGULATORY AUTHORITY**

#### **National Ambient Air Quality Standards**

1. At times relevant to this NOV, the Administrator of EPA ("Administrator"), pursuant to authority under Section 109 of the Act, 42 U.S.C. § 7409, promulgated the National Ambient Air Quality Standards ("NAAQS") for certain criteria pollutants, including particulate matter ("PM10"), CO and NO<sub>2</sub>. See 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 promulgated lists of attainment status designations for each air quality control region ("AQCR") in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for the Hawaii AQCRs are listed at 40 C.F.R. § 81.312.
3. The Facility is located in Hawaii County, which has been designated as attainment/unclassifiable for the NAAQS for PM10, CO and NO<sub>2</sub>. 40 C.F.R. § 81.312.
4. For NAAQS regulatory purposes, including for permitting, NOx levels are used as a surrogate for NO<sub>2</sub> levels since NOx is either present as NO<sub>2</sub> or readily converts to NO<sub>2</sub> in the atmosphere and hence is a precursor to NO<sub>2</sub>.

### State Implementation Plan

5. 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 National Ambient Air Quality Standards ("NAAQS") in the state. Upon approval by EPA, the plan becomes part of the SIP.
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 permit program. Part C requires the issuance of permits prior to the construction or operation of a new source or modification.
7. The Hawaii Department of Health ("HDOH") has the primary jurisdiction for crafting, implementing, and enforcing Hawaii SIP permit program requirements in Hawaii County.
8. Hawaiian Administration Rules ("HAR") §§ 11-60 *et seq.* were approved into and made a part of the federally enforceable Hawaii SIP pursuant to 42 U.S.C. § 7410 in August 1983.<sup>1</sup> 48 Fed. Reg. 37402.

### Prevention of Significant Deterioration

9. Section 110(a)(2)(C) of the Act, 42 U.S.C. § 7410(a)(2)(C), requires that each SIP include a PSD permit program as provided in Part C of Title I of the Act, 42 U.S.C. §§ 7470-7491.
10. 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.

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<sup>1</sup> HDOH significantly updated these administrative permitting regulations in 2001. The new regulations which have not yet been approved into the SIP are located at § HAR 11-60.1 *et seq.*

Reg. 26,402 as amended at 45 Fed. Reg. 527411 (Aug. 7, 1980), 68 Fed. Reg. 11316, 11322 (Mar. 10, 2003), and 68 Fed. Reg. 74483, 74488 (Dec. 24, 2003). The provisions of 40 C.F.R. §§ 52.21(b) through (w) were incorporated by reference and made part of the SIP for the State of Hawaii at 40 C.F.R. § 52.632, Significant Deterioration of Air Quality.

11. The PSD regulations define a "major stationary source" to include any stationary source which emits, or has the potential to emit ("PTE"), 100 tons per year ("tpy") of any air pollutant subject to regulation for 28 defined categories of stationary sources or 250 tpy of any air pollutant subject to regulation under the Act for all other sources. 40 C.F.R. § 52.21(b)(1)(i).
12. Under the PSD program, the construction of a new major stationary source requires the owner or operator to obtain a PSD permit that meets the requirements of Section 165 of the Act for all pollutants that have a significant PTE level. 40 CFR §§ 52.21(b)(2)(i) and 52.21(i)(2).
13. Among other pollutants, the PSD regulations define "significant" in reference to a new source's PTE level as a net emissions increase of or the potential of a source to emit 15 tpy of PM<sub>10</sub>, 100 tpy of CO and 40 tpy of NO<sub>x</sub>. 40 C.F.R. § 52.21(b)(23)(i).
14. In particular, the PSD permitting process requires, among other things, for pollutants emitted in significant amounts the application of BACT 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).























