

Reactivation/New Source Review: U.S. Environmental Protection Agency Determination That Refinery Must Obtain PSD Permit



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The United States Environmental Protection Agency (“EPA”) stated in a November 16th letter that an oil refinery on St. Croix in the U.S. Virgin Islands may not resume operations without going through New Source Review (“NSR”).

The letter was addressed to attorneys for West Indies Petroleum Limited and Port Hamilton Refining and Transportation, LLC (collectively, “Port Hamilton”).

The letter was transmitted by EPA Principal Deputy Assistant Administrator Joseph Goffman.

The Clean Air Act NSR constitutes a preconstruction permitting program that establishes and documents air pollution emission limits from “major” sources of air pollution. The NSR program includes two permitting programs:

- Nonattainment
- Prevention of Significant Deterioration

PSD applies in attainment areas. Such areas are classified as meeting the National Ambient Air Quality Standards.

PSD review and permitting is intended to allow construction of new or modified sources of air pollution in these areas while protecting (i.e., not significantly degrading) air quality. The NSR program is also triggered by existing major sources that are making a significant modification.

Significant time and cost can be occurred in acquiring a PSD permit.

The St. Croix oil refinery was built in the 1960s. It is stated to have been shut down approximately 11 years ago. Port Hamilton had asked EPA whether the existing permits could be used to restart the refinery.

EPA has had in place for a number of years a document known as the “Reactivation Policy.” See In the Matter of Monroe Electric Generating Plant Energy Louisiana, Inc., Proposed Operating Permit, Petition No. 6-99-2 (June 11, 1999) (articulating EPA’s Reactivation Policy). The Reactivation Policy presumes that a major stationary source that has been inactive for two years or more is intended to be permanently out of service (i.e., shut down).

The ramifications of such a determination is that the source would be considered “new” upon reactivation. If so, the major source would be subject to NSR permitting (i.e., acquisition of a PSD permit) before operation could begin. However, the presumption can be rebutted if it can be demonstrated that the cessation of operations was temporary.

The November 16th letter from EPA outlines its conclusion that:

. . . the Refinery was permanently shut down in 2012 and that starting the Refinery qualifies as construction of a new major source under the federal PSD permitting regulations applicable to U.S. Virgin Islands.

EPA articulates in the November 16th letter the application of the Monroe factors to the Port Hamilton oil refinery. Those factors include:

- Length of time the facility has been shut down
- Time and capital needed to restart
- Evidence of intent and concrete plans to restart
- Cause of the shutdown
- Status of permits
- Maintenance and inspection during shutdown

EPA notes by way of summary in applying the Monroe factors that:

. . . the facts and circumstances include, among others, the shutdown by HOVENSA in 2012, the project to refurbish the Refinery by Limetree beginning in 2018, the failed attempts to restart the Refinery in late 2020 and 2021, non-operation since that time, and the need for PHRT to continue to refurbish the Refinery before it can be operated again. While some factors point more strongly in the direction of permanent shutdown than others, when taken together, the factors in this case lead EPA to the conclusion that the Refinery was permanently shut down and thus would constitute a new source upon restart by PHRT.

A copy of the letter can be downloaded [here](#) and attachment [here](#).