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Court Questions EPA's Power to Demand New Pollution Permit for St. Croix Refinery

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The refinery and oil storage facility on the south shore of St. Croix. By. V.I. CONSORTIUM

In a hearing Wednesday on St. Croix, a panel of judges from the 3rd U.S. Circuit Court of Appeals expressed doubt regarding the U.S. Environmental Protection Agency's (EPA) assertion that it has the authority to mandate a new pollution permit for a long-dormant oil refinery in the U.S. Virgin Islands prior to resuming operations.

Port Hamilton is now majority-owned by St. Croix businessman David Johnson through an entity called Crucian Energy. "Big day in court here in St. Croix on my latest venture," Johnson wrote [in a post on his Facebook page on Wednesday](#). "Please send prayers and positive vibes that we have

a just and good outcome in the hearing today."

Later in the comments section of the same post, he revealed, "The hearing could not have gone any better! Thank you for all the prayers and good vibes! It all helped and it worked!"

The refinery, owned by Port Hamilton Refining and Transportation LLLP, has been inactive for a significant period, and the EPA's insistence on a new permit could entail extensive time and substantial financial cost to the refinery, possibly amounting to hundreds of millions of dollars.

According to Reuters, the EPA's interpretation of the term "new source" under the federal Clean Air Act has come under scrutiny, as such permits are typically reserved for new projects or significant modifications to existing sources of emissions. The agency's stance is that the permit is necessary because it considers new operations at long-dormant facilities to be a "new source" of pollution.

The panel of judges, including Circuit Judge Theodore McKee, questioned this interpretation during oral arguments. "I'm trying to get you to help me understand how something that you're not even arguing is new construction is nevertheless new construction," McKee posed to Heather Gange, an attorney from the U.S. Department of Justice representing the EPA.

Andrew Simpson, the attorney representing Port Hamilton, argued that the EPA has other mechanisms at its disposal to ensure compliance with emission limits, making the expensive new permit superfluous. He suggested that the agency could use audits and enforcement of violations of operating permits as alternative strategies.

The refinery's troubled history includes previous ownership by Hovensa, which ceased operations in 2012 due to pollution violations. The facility was bought by private equity investors in 2016, who invested \$4.1 billion in an attempt to revive the aging plant. After a brief period of operation in 2021, the refinery was forced to shut down again, and was eventually sold to Port Hamilton in December 2021 for \$62 million.