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Court Rules EPA Overstepped Authority Regarding Port Hamilton Refinery Restart

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Janeka Simon **July 25, 2023**

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St. Croix Refinery. By. ERNICE GILBERT, V.I. CONSORTIUM

The Environmental Protection Agency overstepped its authority in requiring Port Hamilton Refining and Transportation to get a Prevention of Significant Deterioration (PSD) permit before restarting the refinery on St. Croix's South Shore.

That's the conclusion of a Third Circuit Court of Appeals panel, in a judgment filed on Tuesday. The 17-page document finds that the EPA extended the PSD program beyond the limited circumstances contemplated by the Clean Air Act, to include PHRT's activities to resume refinery operations.

“We begin and end our analysis with the unambiguous text of the CAA,” the court says in its opinion. The relevant section requires a PSD permit for “major emitting facilities” on which “construction is commenced after August 7, 1977.”

At issue was the meaning of the term “construction”. The CAA includes modification of a particular facility as falling under the “construction” umbrella. Therefore, the court held, “major emitting facilities constructed or modified in attainment areas after 1977 are required to obtain a PSD permit.”

The EPA argued that the word, as defined in the Clean Air Act, was ambiguous. According to the agency’s interpretation, the work PHRT was doing in order to bring the facility to a point where refinery operations could commence was included within the concept of “construction”. Port Hamilton disagreed, and the court concurred.

“But we have already held that § 7475 and § 7479 set out an exclusive definition of ‘construction’,” the court’s opinion read. That definition, the court found, meant that the Clean Air Act’s provisions for the requirement of the PSD permit were only relevant to facilities that were being constructed and modified. Being readied for restart after a shutdown, the court held, was not “modification” and thus not part of the definition of “construction” under the Clean Air Act.

Additionally, “the CAA’s visibility protections explicitly extend to facilities that had ceased operations for prolonged periods of time,” the court declared, dispensing with the contention that the length of time the refinery has sat disused since HOVENSA shuttered the facility in 2012, notwithstanding the failed restart effort while under the ownership of Limetree Bay, meant that PHRT would need the PSD permit before continuing with restart operations.

“Had Congress intended for the PSD program to apply to shutdown facilities, it would have used the clear language it included in § 7491” of the Clean Air Act, the court decided.

Ultimately, the appeals panel ruled that the EPA’s Final Determination Letter be vacated, and PHRT’s petition for review be granted. Consortium journalists have reached out to representatives from both PHRT and the EPA for comment on the court’s ruling.