

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
BEFORE THE ADMINISTRATOR

FILED
2010 JUL 12 PM 2:18
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

CITGO REFINING AND CHEMICAL
COMPANY, L.P.

NUECES COUNTY, TEXAS

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EPA DOCKET NO. CAA-06-2010-3308

COMPLAINT AND
CONSENT AGREEMENT AND
FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant), and CITGO Refining and Chemical Company, L.P., Nueces County, Texas (Respondent) in the above referenced proceeding, hereby agree to resolve this matter through the issuance of this Complaint and Consent Agreement and Final Order (Complaint and CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding is for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act, as amended (the Act and CAA), 42 U.S.C. § 7413(d) and for additional terms of settlement as agreed by Respondent. This proceeding was instituted by the issuance of a Complaint and Notice of Opportunity for Hearing (Complaint) incorporated herein, and is simultaneously concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.34.

2. The Complaint alleges CITGO Refining and Chemical Company, L.P. violated regulations promulgated pursuant to the Act at its 1802 Nueces Bay Boulevard, Corpus Christi, Nueces County, Texas facility (the Facility).

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this Complaint; however, Respondent neither admits nor denies the specific factual allegations contained in this Complaint.

4. Respondent consents to the issuance of this CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO.

5. By signature on this Complaint and CAFO, Respondent waives any right to an appeal of this proceeding.

6. This CAFO settles and resolves Respondent's liability for federal civil penalties for the violations and facts alleged in this Complaint.

7. Nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

8. Respondent hereby certifies that as of the date of its execution of this CAFO, the Facility has corrected the violations alleged in the Complaint, and is now, to the best of its knowledge, in compliance with all the requirements of Section 112(r) of the Act.

9. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

10. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. The Respondent is a limited partnership doing business in the State of Texas and is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).

12. Respondent, CITGO Refining and Chemical Company, L.P., is a subsidiary of CITGO Petroleum Corporation, Inc.

13. At all relevant times, Respondent owned and operated a refinery and chemical manufacturing facility located in Nueces County, Texas.

14. Pursuant to Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), it is the objective of the regulations and programs authorized under this subsection to prevent the accidental release of any substance listed pursuant to § 112(r)(3) or any other extremely hazardous substance. Additionally, the owners and operators of stationary sources producing, processing, handling or storing such listed or extremely hazardous substances have a general duty to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

15. Pursuant to CAA § 112(r)(7), 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery,

secondary containment, and other design equipment, work practice and operational requirements to prevent accidental releases of regulated substances. Such regulations are promulgated in 40 C.F.R. Part 68.

16. Respondent is the owner and operator of a stationary source producing, processing, handling or storing substances listed pursuant to §112(r)(3) or extremely hazardous substances, as listed in the Emergency Planning and Community Right-to-Know Act of 1986 [42 USCA § 11001 et seq.].

17. "Stationary source" is defined in Section 112(r)(2)(C) of the Act and 40 C.F.R. § 68.3 as any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

18. "Accidental release" is defined in Section 112(r)(2)(A) and 40 C.F.R. § 68.3 as "an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source."

19. Pursuant to 40 C.F.R. § 68.3, "covered process" means a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

20. Hydrogen Fluoride (HF) is a listed hazardous substance pursuant to 40 C.F.R. § 68.130.

21. Respondent maintains more than the threshold quantity of HF in a covered process.

22. On July 19, 2009, Respondent suffered an equipment failure which resulted in a fire at the East Plant #2 Alkylation Unit. The fire began at approximately 8:35 AM.

23. The fire caused a release of approximately 561 pounds of HF.

24. The initial fire caused one CITGO employee to be severely injured with thermal burns.

25. The all clear was sounded in relation to the event mentioned above at 8:36 PM on July 28, 2009.

26. On August 12-14, 2009, EPA Region 6 conducted an unannounced CAA §112(r) Inspection of Respondent's Facility.

Count 1

27. The July 19, 2009, fire and subsequent release were preventable.

28. Respondent did not exercise its general duty to ensure that its facility was maintained in a safe manner.

29. Therefore, Respondent violated Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), by failing to maintain a safe facility and by failing to take such steps as are necessary to prevent releases.

Count 2

30. Pursuant to 40 C.F.R. § 68.69(a)(3)(iv), the owner or operator shall develop and implement written operating procedures for safely conducting activities involved in each covered process consistent with the process safety information and shall address the control of hazardous chemical inventory levels.

31. During the inspection identified in paragraph 26, the operating procedure was requested from CITGO representatives to identify CITGO's written operating procedure that provides clear instructions for maintaining control of hazardous chemical inventory levels.

32. Respondent was unable to provide such written operating procedures.

33. Respondent failed to meet the requirements of 40 C.F.R. § 68.69(a)(3)(iv) by not having written operating procedures for the control of hazardous chemical inventory levels. Respondent subsequently issued such written operating procedures documenting inventory control practices required for the HF storage tanks.

34. Therefore, Respondent violated Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7) by failing to meet the requirements of 40 C.F.R. § 68.69(a)(3)(iv).

III. CIVIL PENALTY AND TERMS OF SETTLEMENT

35. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), which authorizes EPA to assess a civil penalty of up to twenty-five thousand dollars (\$25,000)¹ per day for each violation of the Act. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the

¹ The Civil Penalty Inflation Adjustment Rule of December 31, 1996 (61 Fed. Reg. 69360) provides for ten percent (10%) increases in the statutory penalty provisions (\$25,000) cited in the Clean Air Act Stationary Source Civil Penalty Policy dated October 25, 1991 (CAA Penalty Policy). The ten percent (10%) increase is effective for violations which occurred between January 30, 1997 and March 14, 2004 for a statutory maximum penalty of \$27,500. The Civil Penalty Inflation Adjustment Rule of February 13, 2004 (69 Fed. Reg. 7121) provides for a further increase in the statutory penalty provisions in the CAA Penalty Policy by 17.23% for violations occurring on or after March 15, 2004, for a statutory maximum penalty of \$32,500. The Civil Penalty Inflation Adjustment Rule of December 11, 2008 (73 Fed. Reg. 75340) provides for a further increase in the statutory penalty provisions in the CAA Penalty Policy for violations occurring on or after January 12, 2009, for a statutory maximum penalty of \$37,500.

duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, it is ORDERED that Respondent be assessed a civil penalty in the amount of two hundred twenty five thousand dollars (\$225,000.00).

36. The violation described in paragraph 29 was a continuing violation. Within thirty (30) days of Respondent's receipt of this fully executed CAFO, Respondent shall pay two hundred twenty five thousand dollars (\$225,000.00) by cashier's or certified check made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of four (4) ways: regular U.S. Postal Service mail, to include certified mail; overnight mail; wire transfer; or On Line Payment. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
(314) 418-4087

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"
phone number (412) 234-4381.

For On-line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in search field
Open form and complete required fields.

PLEASE NOTE: Docket Number CAA-06-2010-3308 shall be clearly typed on the check to ensure proper credit. The check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and transmittal letter to the following:

Guadalupe Pesina (6EN-AT)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Region 6 Hearing Clerk
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

37. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

38. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

39. EPA will also assess a fifteen dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

40. Pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including, but not limited to, attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

41. This document is a "Final Order" as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of "prior such violations".

IV. RETENTION OF ENFORCEMENT RIGHTS

42. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of any other Federal laws, regulations, statutes, or permitting programs not the subject of this action.

43. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.

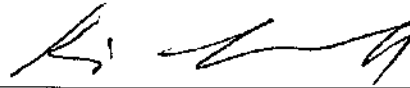
V. COSTS

44. Each party shall bear its own costs and attorneys fees.

IT IS SO AGREED:

FOR THE RESPONDENT:

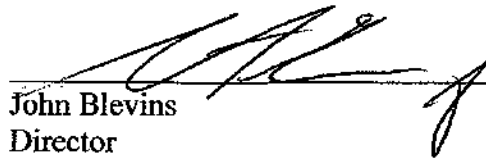
Date: 7/6/10



Kevin Ferrall
Vice President and General Manager
CITGO Refining and Chemical Company, L.P.
Corpus Christi Refinery

FOR THE COMPLAINANT:

Date: 7/9/10



John Blevins
Director
Compliance Assurance and
Enforcement Division

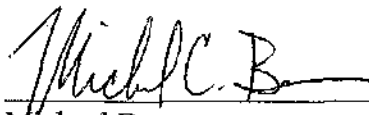
FINAL ORDER

Pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified.

This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk

Dated July 12, 2010



Michael Barra
Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of July, 2010, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order ("Complaint and CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7008 0150 0003 0411 6709

Mr. Kevin Ferrall
Vice President and General Manager
CITGO Refining and Chemical Company, L.P.
1802 Nueces Bay Boulevard
Corpus Christi, TX 78407-2222

Sandra Hardy
U.S. EPA, Region 6
Dallas, Texas