

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2013 JUL -3 PM 2: 23
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	§	
	§	
CALUMET PENRECO, LLC,	§	EPA DOCKET NO.
	§	CAA-06-2013-3327
RESPONDENT	§	
	§	COMPLAINT AND NOTICE OF
DICKINSON, TEXAS	§	OPPORTUNITY FOR A HEARING
	§	

I.

STATEMENT OF AUTHORITY

1. This Complaint and Notice of Opportunity for a Hearing (Complaint) is issued to initiate an administrative action against Calumet Penreco, LLC (Respondent) as authorized by Sections 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, as amended (Act or CAA), 42 U.S.C. §§ 7413(a)(3) & 7413(d)(1)(B), and 40 C.F.R. §§ 22.13 and 22.34(b). The Complainant in this action is the Director, Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6, who has been delegated the authority to issue such complaints in Region 6.
2. Through this action, Complainant seeks an order assessing a civil administrative penalty for violations of CAA Section 112(r)(1), 42 U.S.C. § 7413(r)(1). Complainant will show that Respondent owns and operates the Calumet Penreco, LLC facility, located in Dickinson, Texas and is subject to general duties under Section 112(r)(1), which Respondent failed to fulfill leading up to and following the accidental release of an extremely hazardous substance from Respondent's Dickinson, Texas facility on July 8, 2012.

II.

STATUTORY AND REGULATORY BACKGROUND

3. Under CAA Sections 113(a)(3) and 113(d)(1)(B), 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA including, but not limited to, a requirement or prohibition of any rule promulgated under the CAA, other than those requirements specified in CAA Sections 113(a)(1), 113(a)(2) or 113(d)(1)(A), 42 U.S.C. § 7413(a)(1), 7413(a)(2), or 7413(d)(1)(A), the Administrator may issue an order assessing a civil administrative penalty. As adjusted by the Civil Penalty Inflation Adjustment Rule of December 11, 2008 (73 Fed. Reg. 75340, 75346), 40 CFR § 19.4, the Administrator may assess a civil penalty of up to \$37,500 per day of violation for a violation occurring after January 12, 2009.
4. Under CAA Section 112(r)(1), 42 U.S.C. §7412(r)(1), “[i]t shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty, in the same manner and to the same extent as Section 654, Title 29 of the United States Code, 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.”

5. "Owner or operator" is defined in CAA Section 112(a)(9), 42 U.S.C. §7412(a)(9), as any person who owns, leases, operates, controls, or supervises a stationary source.
6. "Stationary source" is defined in CAA Section 112(r)(2)(C), 42 U.S.C. §7412(r)(2)(C), as any buildings, structures, equipment, installations or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.
7. "Accidental release" is defined in CAA Section 112(r)(2)(A), 42 U.S.C. §7412(r)(2)(A), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

III.

ALLEGATIONS

8. Respondent is a Delaware Limited Liability Corporation doing business in the State of Texas.
9. Respondent is a "person" as that term is defined in CAA Section 302(e), 42 U.S.C. § 7602(e), and within the meaning of CAA Section 113(d), 42 U.S.C. § 7413(d).
10. Respondent owns and operates a facility (Facility) located at 4401 Park Avenue in Dickinson, Texas.
11. The Facility is a specialty chemical production facility.
12. Accidental releases could occur from the Facility.
13. Respondent has owned and operated the Facility since, approximately, January 2008.

14. The Facility's buildings, equipment and operations are a "stationary source" as defined in CAA Section 112(r)(2)(C).
15. The Facility produces, processes, handles or stores substances identified as extremely hazardous pursuant to CAA Section 112(r)(3).
16. Specifically, the Facility produces, processes, handles or stores Oleum 20% grade (104% fuming sulfuric acid) in the White Oil Acid Exchanger.
17. As identified in 40 CFR Part 68.130, Oleum is a regulated substance pursuant to CAA Section 112(r)(3).
18. Oleum 20% grade (104% fuming sulfuric acid) is an extremely hazardous substance because of its toxicity.
19. CAMEO Chemicals is a tool developed by the National Oceanic and Atmospheric Administration's Office of Response and Restoration in partnership with the Environmental Protection Agency's Office of Emergency Management and the U.S. Coast Guard's Research and Development Center, and designed for people who are involved in hazardous material incident response and planning.
20. CAMEO Chemicals contains a library of datasheets containing response-related information and recommendations for hazardous materials that are commonly transported, used, or stored in the United States.
21. CAMEO Chemicals also contains a reactivity tool that can be used to predict potential reactive hazards.

22. CAMEO Chemicals and other chemical safety guides indicate that Oleum 20% grade (104% fuming sulfuric acid) reacts violently when it comes in contact with water.
23. Additionally, Oleum 20% grade (104% fuming sulfuric acid) is a strong oxidizer, highly reactive, and capable of igniting combustible material on contact.
24. Oleum 20% grade (104% fuming sulfuric acid) is toxic to the human body and corrosive to body tissues. Exposure to small amounts of Oleum 20% grade (104% fuming sulfuric acid) may result in death.
25. On July 8, 2012, an accidental release of Oleum 20% grade (104% fuming sulfuric acid) occurred from a pin-hole leak in a piping Section of the plant's White Oil Acid Exchanger.
26. A gasket, produced in-house by Respondent, was installed in the White Oil Acid Exchanger.
27. American Society of Mechanical Engineers (ASME) specification B16.5 is a standard that covers pressure, temperature ratings, materials, dimensions, tolerances, marking, testing, and methods of designating openings for pipes, pipe flanges and flanged fittings.
28. ASME Standard B16.5 also identifies the proper size of inner and outer hole diameters for gaskets used in pipes, piped flanges and flanged fittings.
29. The Respondent determined as part of its incident investigation that the diameter of the inner hole of the gasket used by Respondent in the White Oil Acid Exchanger Unit was neither in conformance with ASME Standard B16.5, nor was the gasket in compliance with the manufacturer's specifications.
30. The improperly sized gasket created downstream turbulence and subsequent corrosion/erosion of the downstream piping.

31. As a result of the downstream turbulence and subsequent corrosion, the pipe integrity was compromised and a leak occurred.

32. The leak of Oleum 20% grade (104% fuming sulfuric acid) mixed with and reacted to the condensate/steam of a nearby process cooling tower and was further transported into the ambient air above the facility.

33. A white cloud was evident high above the facility and moving outside the facility boundaries to the northeast.

34. A nearby resident sighted the leaking Oleum and condensate/steam mixture and reported the event to the Dickinson Police Department.

35. The Dickinson Police Department contacted the Facility and alerted the Respondent to the release.

36. Until contacted by the Dickinson Police Department, the Respondent was unaware of the continuing release of Oleum 20% grade (104% fuming sulfuric acid).

37. Not knowing whether the facility was having a release, and if so what danger the release might pose to the surrounding community, the Dickinson Police Department initiated a shelter in place for residents within the immediate area of the plant as a precautionary measure.

IV.

GENERAL DUTY CLAUSE VIOLATION

Count 1. Respondent violated the General Duty Clause under CAA § 112(r)(1), 42 U.S.C. § 7412(r)(1) by failing to design and maintain a safe facility.

38. Complainant incorporates paragraphs 1-37 as if restated herein.

39. As the owner and operator of the Facility, Respondent is subject to the general duties enumerated in CAA Section 112(r)(1).

40. Respondent failed to design and maintain a safe facility by using an improperly sized gasket in the White Oil Acid Exchanger.

41. Respondent failed to ensure that the in-house gasket was to the ASME B16.5 or manufacturer's specifications.

42. The improperly sized gasket caused downstream turbulence and subsequent corrosion/erosion resulting in the leak of an extremely hazardous substance.

43. Respondent could have prevented the release of Oleum 20% grade (104% fuming sulfuric acid) by using the appropriate gasket as specified by the ASME B16.5 standard.

44. Therefore, Respondent failed to satisfy one or more of its general duties under CAA Section 112(r)(1).

V.

PROPOSED PENALTY

45. Complainant incorporates paragraphs 1-44 as if restated herein.

46. Pursuant to CAA Section 113(e)(1), 42 U.S.C. § 7413(e)(1), in determining the amount of any penalty to be assessed, the Administrator shall consider (in addition to such other factors as justice may require) 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 duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the

economic benefit of noncompliance, and the seriousness of the violation. Complainant has considered each of these factors in determining the penalty.

47. In light of the facts alleged in this Complaint, and having considered the statutory penalty factors in CAA Section 113(e)(1), 42 U.S.C. § 7413(e)(1), Complainant requests issuance of an administrative order against Respondent assessing a civil administrative penalty of \$37,500.00 for the violations alleged in Section IV of this Complaint.

48. Complainant has attached a copy of its penalty calculation reflecting the manner in which the penalty was calculated.

VI.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

49. By issuance of this Complaint, Respondent is hereby notified of its opportunity to answer and request a hearing on the record in this matter.

50. If Respondent contests any material fact upon which this Complaint is based, contends that the amount of the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk for EPA Region 6 not later than thirty (30) days after being served with this Complaint.

51. Respondent's Answer shall clearly and directly admit, deny, or explain each of the factual allegations set forth in this Complaint with regard to which Respondent has knowledge. If Respondent has no knowledge of a particular factual allegation and states so in its Answer, the allegation will be deemed denied. The failure of Respondent to admit, deny or explain any

material factual allegation in the Complaint constitutes an admission of the allegation.

52. Respondent's Answer also shall state (a) the circumstances or arguments which are alleged to constitute the grounds of defense, (b) the facts which Respondent disputes, (c) the basis for opposing any proposed relief, and (d) whether a hearing is requested. A hearing on the issues raised by this Complaint and Respondent's Answer shall be held upon request of the Respondent in its Answer. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. §§ 554 and 556, and the Consolidated Rules of Practice, 40 CFR Part 22, a copy of which is included.

53. The Answer must be sent to:

Regional Hearing Clerk (6RC-D)
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

In addition, Respondent is requested to send a copy of the Answer and all other documents that it files in this action to:

Mr. Jeffrey Clay
Assistant Regional Counsel (6RC-ER)
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

54. As provided in 40 CFR § 22.17, if Respondent fails to file a written Answer within thirty (30) days of service of this Complaint, Respondent may be deemed to have admitted all allegations made in this Complaint and waived its right to a hearing. A Default Order may

thereafter be issued, and the civil penalty assessed shall become due and payable without further proceedings thirty (30) days after a Default Order becomes final.

55. Respondent is further informed that 40 CFR Part 22 prohibits any ex parte (unilateral) discussion of the merits of this action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

VII.

SETTLEMENT CONFERENCE

56. Whether or not Respondent requests a formal hearing, Respondent may request an informal conference in order to discuss the facts of this case and to arrive at settlement. To request a settlement conference, Respondent may contact Mr. Jeffrey Clay, Assistant Regional Counsel, at the address in paragraph 53 of this Complaint or by phone at (214) 665-7297.

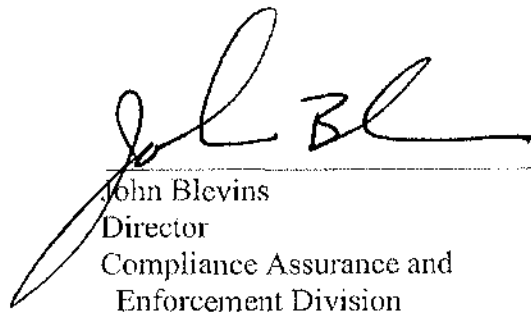
57. Please note that a request for an informal settlement conference does not extend the 30-day period during which Respondent must submit a written Answer and, if desired, a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing procedure.

58. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of an informal conference. Respondent is advised that no penalty reduction will be made simply because such a conference is held. As set forth in

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40 CFR § 22.18, any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement signed by the parties and their representatives and a Final Order issued by the Regional Administrator, EPA Region 6. The issuance of such Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

Date: 7.3.13



John Blevins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Complaint and Notice of Opportunity for Hearing (Complaint) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Wells Fargo Bank Tower, Dallas, Texas 75202-2733, and that a true and correct copy of the Complaint and the Consolidated Rules of Practice were placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL, RETURN RECEIPT REQUESTED: # 70030500000308752060

CT CORPORATION SYSTEM
Registered Agent for Calumet Penreco, LLC
350 N. St. Paul St., Ste. 2900
Dallas, TX 75201-4234 USA

Date: 07-03-2013

Loni Jackson
Paralegal