

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 SEP 22 PM 3:21

IN THE MATTER OF:

Suncor Energy (U.S.A.) Inc.
Suncor Energy Commerce City Refinery
5801 Brighton Boulevard
Commerce City, Colorado 80022-3696

Respondent

DOCKET NO.: ~~EPCA~~ 08-2014-0001

EPA REGION VIII
HEARING CLERK

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency, Region 8 (the EPA or Complainant), and Respondent, Suncor Energy (U.S.A.) Inc. (Respondent), (together, the Parties), hereby consent and agree as follows:

1. This civil administrative enforcement action is issued to Respondent pursuant to section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045, also known as the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) for alleged violations of the implementing regulations associated with the “Emergency Notification” requirements of section 304 of the EPCRA, 42 U.S.C. § 11004, and the “Toxic Release Inventory” requirements of section 313 of the EPCRA, 42 U.S.C. § 11023. This proceeding is subject to EPA’s *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (Rules of Practice), 40 C.F.R. part 22.
2. The undersigned EPA official has been properly delegated the authority to issue this action.
3. 40 C.F.R. § 22.13(b) provides that where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a CCCA.
4. The parties agree that the settling of this action and refraining from the adjudication of any issue of fact or law, with regard to the issues herein, is in their interest and in the public interest.

5. Respondent consents to the terms of this CCCA, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

6. Solely for the purposes of this CCCA, Respondent consents to the EPA's jurisdiction, and waives all objections and defenses it may have to the EPA's jurisdiction.

7. Respondent does not admit to liability with respect to any of the allegations contained in this CCCA.

8. Respondent waives any and all claims for relief, and otherwise available rights to judicial or administrative review or other remedies which the Respondent may have against the EPA with respect to the terms and conditions set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

STATUTORY AND REGULATORY FRAMEWORK

9. Pursuant to section 304 and 328 of EPCRA, 42 U.S.C. §§ 11004 and 11048, EPA promulgated the Emergency Notification rule, 40 C.F.R. Part 355 Subpart C. Pursuant to Section 304(b) of EPCRA and 40 C.F.R. § 355(a) immediate notification of the release of an EPCRA extremely hazardous substance (EHS), equal to or exceeding the reportable quantity, must be made to the applicable Local Emergency Planning Committee (LEPC) and the State Emergency Response Commission (SERC).

10. Pursuant to section 304(c) of the EPCRA and 40 C.F.R. Part 355.40(b), a written follow-up emergency notification must be made to the LEPC and SERC as soon as practicable after the release.

11. Pursuant to sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule, 40 C.F.R. Part 372. Section 313(b) of EPCRA and 40 C.F.R. § 372.22, address owners and operators of facilities that have 10 or more full-time employees; are in specific Standard Industrial Classification Codes; and manufacture, process, or otherwise use a toxic chemical listed under section 313(c) of EPCRA and 40 C.F.R. §

372.65, in quantities exceeding the appropriate threshold as set forth in 40 C.F.R. § 372.25. Under section 313(b) of EPCRA, owners and operators are required to annually submit a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (Form R), for each toxic chemical listed under section 313(c) of EPCRA and 40 C.F.R. § 372.65, that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. 40 C.F.R. § 372.10 requires each person subject to this part to maintain documentation supporting the determination of whether a threshold under 40 C.F.R. § 372.38 applies.

12. Respondent's facility has 10 or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3.

13. Respondent's facility is in SIC code 20-39. Specifically, Respondent operates the Commerce City, Colorado facility which is in the NAICS code 324110 (Petroleum Refining).

14. Respondent's facility otherwise uses cobalt compounds (EPCRA section 313 Category Code: N096), methanol (CAS # 67-56-1), vanadium compounds (EPCRA section 313 Category Code: N770), and tetrachloroethylene (CAS#: 127-18-4) which are toxic chemicals listed under 40 C.F.R. § 372.65, for which reporting is required pursuant to 40 C.F.R. § 372.22 and documentation of threshold determinations is required pursuant to 40 C.F.R. § 372.10.

SPECIFIC ALLEGATIONS

15. On December 10-14, 2012, authorized representatives of the EPA conducted an inspection (EPA inspection) of the Facility, with the consent of the Respondent, to determine compliance with the EPCRA. During the EPA inspection, the EPA representatives observed alleged violations of the EPCRA sections 304 and 313. The alleged violations are described in paragraphs 16-20.

16. 40 C.F.R. § 355(a) provides that each release of an EPCRA EHS requires an immediate notification of the release, equal to or exceeding the reportable quantity, to the applicable LEPC and the

SERC. The Facility failed to provide immediate notification for 27 releases of sulfur dioxide in 2010 and 2011 which exceeded the reportable quantity.

17. 40 C.F.R. § 355(a) provides that each release of an EPCRA EHS requires a written follow-up notification of the release, equal to or exceeding the reportable quantity, to the applicable LEPC and the SERC. The Facility failed to provide the required written follow-up notices for 27 releases of sulfur dioxide in 2010 and 2011 which exceeded the reportable quantity.

18. 40 C.F.R. § 372.10 provides that the Facility must retain supporting documentation of threshold calculations for each EPCRA section 313 toxic chemical. The required documentation for methanol for reporting years 2009 and 2010, and vanadium compounds for reporting year 2009, 2010, and 2011, was either not available or incomplete.

19. 40 C.F.R. § 372.30 provides that for each toxic chemical known by the owner or operator to be manufactured, processed, or otherwise used in excess of the applicable threshold for a calendar year, the owner or operator must submit a completed EPA Form R to the EPA and the State in which the facility is located. For reporting year 2011, Respondent did not submit the required Form R for the toxic chemical cobalt compounds (EPCRA section 313 Category Code: N096). This is an alleged violation of 40 C.F.R. § 372.30.

20. For reporting year 2010, Respondent did not submit the required Form R for the toxic chemical tetrachloroethylene (CAS#: 127-18-4). This is an alleged violation of 40 C.F.R. § 372.30.

PENALTY

21. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c), as amended, and 40 C.F.R. § 372.18, authorize EPA to assess a civil penalty of up to \$37,000 for each violation of the EPCRA. For purposes of determining the amount of any civil penalty to be assessed, the EPA is required to consider, in addition to such other factors as justice may require, to the extent known, the nature, circumstances,

extent and gravity of the violations alleged, any of Respondent's history of prior violations of EPCRA, or lack thereof, and degree of culpability, and any voluntary disclosure, or lack thereof.

22. Respondent consents and agrees to pay a civil penalty in the amount of one hundred and sixty two thousand and two hundred dollars (\$162,200) (the "Penalty").

23. Attachment A (Collection Information) to this CCCA, provides terms for payment of the Penalty including the assessment of fees and interest charges for late payments.

COMPLIANCE

24. Respondent agrees, by signing this CCCA, that all alleged violations have been corrected.

25. Once the Respondent receives a copy of the Final Order and pays in full the Penalty, the EPA agrees not to take any further civil or administrative enforcement action (including any civil or administrative penalty action) against the Respondent for the violations alleged in this CCCA.

OTHER TERMS

26. This CCCA contains all terms of the settlement agreed to by the parties.

27. This CCCA, upon incorporation into a final order, applies to and is binding upon EPA, Respondent, and Respondent's successors or assigns.

28. Nothing in the CCCA shall relieve Respondent of the duty to comply with the EPCRA and its implementing regulations.

29. Failure of Respondent to comply with any terms of this CCCA shall constitute a breach and may result in referral of the matter to the U.S. Department of Justice for enforcement of this agreement and such other relief as may be appropriate.

30. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.

31. Nothing in the CCCA shall be construed as a waiver by the United States of its authority to seek costs or any appropriate penalty associated with any action instituted as a result of Respondent's failure to perform pursuant to the terms of this CCCA.

32. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into and legally bind Respondent to the terms and conditions of the CCCA.

33. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.

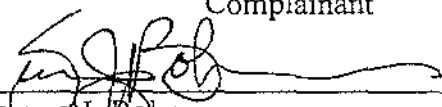
34. Each party shall bear its own costs and attorney fees in connection with this administrative matter.

35. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

36. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil and administrative settlement of the violations alleged in this CCCA.


UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Office of Enforcement, Compliance and
Environmental Justice

Date: SEP 27 2014

Complainant
By: 
Suzanne J. Bohan
Acting Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Suncor Energy (U.S.A.) Inc.

Date: Sept 9, 2014

Respondent
By: 
SHELLEY POWELL VP REFINING,
COMMERCE CITY

COLLECTION INFORMATION

Payment shall be due on or before 30 calendar days after the date of the Final Order issued by the Regional Judicial Officer who adopts this agreement. If the due date falls on a weekend or legal Federal holiday, then the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)

In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

CHECK PAYMENTS:

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

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

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"

OVERNIGHT MAIL:

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

Contact: Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required fields.