



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2012 DEC 14 AM 8:13

FILED  
EPA REGION VIII  
HEARING CLERK

_____	)	
IN THE MATTER OF:	)	
	)	
Holly Refining & Marketing Company	)	<b>COMBINED COMPLAINT AND</b>
Woods Cross, LLC	)	<b>CONSENT AGREEMENT</b>
Woods Cross Refinery	)	
393 South 800 West	)	<b>DOCKET NO. : CAA-08-2013-0002</b>
Woods Cross, Utah 84087	)	
	)	
Respondent	)	
_____	)	

**COMPLAINT**

1. This civil administrative enforcement action is issued to Holly Refining & Marketing Company – Woods Cross, LLC (Holly Refining or Respondent), pursuant to § 113(a)(3)(B) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(a)(3)(B), for alleged violations of the implementing regulations associated with the “Prevention of Accidental Releases” requirements of 42 U.S.C. § 7412(r) (CAA § 112(r)(7)). This proceeding is subject to EPA’s *Consolidated Rule 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 sign this Combined Complaint and Consent Agreement (CCCA).
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 without the filing of a complaint or the adjudication of any issue of fact or law 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. Nothing herein shall be deemed an admission of the allegations, terms, conditions and/or issues of law or fact in this CCCA, except in an action by EPA to enforce the terms of this CCCA.

6. Nothing in this CCCA shall be deemed or construed to establish precedent for any other facility owned or operated by Respondent.

#### JURISDICTION AND WAIVER OF RIGHT TO HEARING

7. For the purposes of any EPA action to enforce this CCCA, Respondent admits the jurisdictional allegations in this CCCA, and neither admits nor denies all remaining allegations, terms and conditions contained herein.

8. Respondent waives any and all claims for relief against EPA, and otherwise available rights to judicial or administrative review or other remedies which the Respondent may have against EPA, with respect to any issue of fact or law or any 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. Nothing contained herein shall be deemed to waive or release any claims that Respondent may have against any persons or entities who are not parties to this CCCA. Except as specifically set forth in this paragraph and paragraph 5, nothing in this CCCA shall constitute or be construed as a waiver or release of any rights, causes of action, claims, demands or defenses Respondent may have.

#### STATUTORY AND REGULATORY FRAMEWORK

EPA provides the following statutory and regulatory framework:

9. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), authorizes the Administrator to promulgate regulations regarding the prevention and detection of accidental releases of

designated chemicals. Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B), requires the Administrator to promulgate regulations requiring the owners or operators of stationary sources where a regulated substance is present above a threshold quantity to prepare a risk management plan to prevent or minimize risks of accidental releases of those designated substances. The regulations promulgated by EPA pursuant to section 112(r)(7) of the CAA are set forth in 40 C.F.R. Part 68.

10. Under 40 C.F.R. § 68.3, the following definitions apply:

- a. "Stationary source" means "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."
- b. "Regulated substance" means "any substance listed pursuant to section 112(r)(3) of the Clean Air Act as amended in § 68.130." Threshold quantities for the regulated substances are included in 40 C.F.R. Part 68 § 68.130.

11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines the term "person" to include in relevant part, an individual, corporation, or partnership.

12. Respondent is a person, and thus subject to regulation under section 112(r) of the CAA.

13. Respondent is the owner and/or operator of the Woods Cross Refinery, a stationary source, located at 393 South 800 West, Woods Cross Utah (the Refinery or the Facility).

14. The Facility uses, handles and/or stores more than a threshold quantity of hydrofluoric acid and flammable mixtures, both regulated substances.

15. Pursuant to section 112(r)(7) of the CAA, the Respondent is required to prepare and implement a risk management program (RMP) to detect and prevent or minimize accidental releases of such substances.

### SPECIFIC ALLEGATIONS

EPA alleges the following:

16. On December 15 and 16, 2011, an authorized representative of the EPA conducted an inspection of the Refinery to determine compliance with section 112(r)(7) of the CAA and 40 C.F.R. Part 68 (EPA inspection). During the EPA inspection, the EPA representative observed violations of 40 C.F.R. Part 68. The violations are described in paragraphs 17-19.

17. 40 C.F.R. § 68.67(e) provides that the owner or operator shall assure that the process hazard analysis (PHA) recommendations are resolved in a timely manner and that the resolution is documented. Recommendations from the HF Alkylation unit PHA were not resolved by the Respondent in a timely manner. This is a violation of 40 C.F.R. § 68.67(e).

18. 40 C.F.R. § 68.69(a)(2)(i) provides that operating procedures shall address operating limits and the consequences of deviation from those limits. Respondent's operating procedures for several units did not adequately identify safe upper and lower limits and consequences of deviations from those limits. This is a violation of 40 C.F.R. § 68.69(a)(2)(i).

19. 40 C.F.R. § 68.73(e) provides that the owner or operator shall correct deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner when necessary means are taken to assure safe operation. The Respondent did not correct deficiencies with the Frozen Earth Storage Unit (FES) in a timely manner. This is a violation of 40 C.F.R. § 68.73(e).

### PENALTY

20. Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. Part 19 authorize the assessment of a civil penalty of up to \$37,500 per day of violation for each violation of the implementing regulations associated with the "Prevention of Accidental Releases" requirements of 42 U.S.C. § 7412(r). For purposes of determining the amount of any

civil penalty to be assessed, § 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), requires EPA to take into account, 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 violations 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 violations, the economic benefit of noncompliance, and the seriousness of the violations.

21. This CCCA, upon incorporation into a final order, applies to and is binding upon EPA, Respondent, and Respondent's successors or assigns. 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. This CCCA contains all terms of the settlement agreed to by the parties. Attachment A (Collection Information) provides terms for payment including the assessment of fees and interest charges for late payments. Respondent consents and agrees to pay a civil penalty in the amount of one hundred fifteen thousand dollars (\$115,000).

#### CERTIFICATION OF COMPLIANCE

22. Respondent certified in its June 25, 2012 letter to EPA that its operating procedures are current and accurate. Respondent shall submit to EPA a Certification of Compliance, demonstrating that:

- a. On or before February 28, 2013, or one hundred twenty (120) days after the date of the Final Order approving this CCCA, whichever is later, the following recommendations from the 2008 HF Alkylation unit PHA have been resolved and documented as such: #2 – PSV calculation; #5 – Installation of blind; #11 – laboratory procedure (can either be implemented or documented as not necessary); #13 – pull PSV and change setpoint to match MAWP (this may not actually require



pulling the PSV but rather updating the paperwork as API allows for +/-3% on pop test); #14 – pull PSV and change setpoint to match MAWP (this may not actually require pulling the PSV but rather updating the paperwork as API allows for +/-3% on pop test); #15 – monthly monitoring/inspection of the “dead leg” until such time as Respondent determines that the dead leg can be removed in a safe, effective and efficient manner, which shall be no later than the next turnaround of the HF Unit; #19 – re-enable alarm; #20 – PSV calculation; #21 – re-enable alarm; #22 – re-enable alarm; #27 –completed; and #32 – update start-up procedure; and

- b. On or before December 31, 2012, or sixty days after the date of the final order approving this CCCA, whichever is later, retain a consultant to evaluate and complete the task of ensuring that operating procedures address operating limits and the consequences of deviation from those limits.

23. The Certification of Compliance shall contain the date, printed name, and signature of a Holly Refining officer, as well as the following statement:

*I certify that I am authorized to verify the completion of work on behalf of Holly Refining. I certify under penalty of perjury that, to the best of my knowledge after reasonable inquiry, the foregoing is true and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.*

24. The Certification of Compliance shall be mailed or emailed to Greg Bazley at the following address:

Greg Bazley  
U.S. EPA Region 8  
1595 Wynkoop Street (8ENF-AT)  
Denver, CO 80202-1129  
Email: [bazley.greg@epa.gov](mailto:bazley.greg@epa.gov)

25. Once the Respondent receives a copy of the Final Order and pays in full the penalty assessment described above, the EPA agrees not to take any further civil administrative penalty action against the Respondent for the violations alleged in this CCCA.

OTHER TERMS

26. Nothing in this CCCA shall relieve Respondent of the duty to comply with the CAA and its implementing regulations.
27. 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.
28. Nothing in this 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.
29. The undersigned representative of Holly Refining certifies that he or she is fully authorized to enter into and legally bind Holly Refining to the terms and conditions of the CCCA.
30. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.
31. Each party shall bear its own costs and attorney fees in connection with this administrative matter.
32. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
33. Nothing herein is intended by the parties to create any third-party beneficiaries, or any duties or obligations on the part of Respondent, its officers, directors, employees, representatives, successors and assigns, to any persons or entities who are not a party to this CCCA.



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


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

Date: 12/13/2012

Complainant  
By:   
Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

HOLLY REFINING & MARKETING COMPANY  
- WOODS CROSS LLC  
WOODS CROSS REFINERY

Date: 12/13/12

Respondent  
By:   
Lynn Readington  
Refinery Manager  
Title

## **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.

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBIMED COMPLAINT, CONSENT AGREEMENT/FINAL ORDER** in the matter of **HOLLY REFINING & MARKETING CO; WOODS CROSS, LLC.; and WOODS CROSS REFINERY;** **DOCKET NO.: CAA-08-2013-0002** was filed with the Regional Hearing Clerk on December 14, 2012.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on December 14, 2012.

Lynn Keddington, Refinery Manager  
Woods Cross Refinery  
393 South 800 West  
Woods Cross, Utah 84087

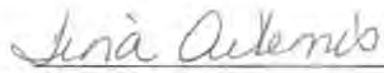
E-mailed and U. S. mail certified/return receipt requested

Robert W. Lawrence, Esq.  
Davis, Graham & Stubbs, LLP  
1550 17<sup>th</sup> Street, Suite 500  
Denver, CO 80202-1500  
robert.lawrence@dgslaw.com

E-mailed to:

Kim White  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

December 14, 2012

  
Tina Artemis  
Paralegal/Regional Hearing Clerk