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2013 JUL -9 AM 9:58

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
BEFORE THE ADMINISTRATOR

WESTERN REFINING CO., INC.
EPA REGION VI

In the Matter of:

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§

Western Refining Southwest, Inc.,

EPA Docket No.

CAA-06-2013- 3342

Respondent

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 Western Refining Southwest, Inc. ("Respondent") in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order ("CAFO").

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to 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) and 7413(d)(1)(B), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), and 22.34.

2. For purposes of this proceeding, Respondent admits the jurisdictional allegations contained herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO, except that Respondent denies there were any off-site impacts from alleged "accidental releases" and denies that KOH is a "regulated

substance” within the meaning of CAA 112(r)(3) and is not an EPCRA identified extremely hazardous substance.

3. For the purposes of this proceeding, Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth herein, and waives all defenses, which have been raised or could have been raised to the claims set forth in this CAFO. Respondent does not waive any rights or defenses which have been raised or could be raised in any state law proceeding. This CAFO may not be used in any federal or state proceeding except proceedings by EPA to enforce this CAFO.

4. Compliance with all the terms and conditions of this CAFO shall resolve only those violations, which are set forth herein.

5. Respondent consents to the issuance of this CAFO and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

II. ALLEGATIONS

6. Respondent is a corporation authorized to do business in the State of New Mexico.

7. Respondent owns and operates a Refinery at I-40, Exit 39 in Jamestown, New Mexico (“Facility”).

8. The Respondent operates a refinery with a throughput of crude oil of approximately 23,000 barrels a day and uses potassium hydroxide (KOH) at the facility in the KOH Tower.

Count I

9. On September 12, 2012, the facility personnel cleaned the KOH Tower.

During the cleaning, the hose detached from the sewer cup, releasing KOH.

10. The uncontrolled hose released KOH before the valve was shut off.

11. This caused a mist of KOH and water to be released in the Treater and the Gas Con areas, with the wind blowing from a north-north-east direction.

12. Persons onsite of the Facility downwind were exposed to the mist of KOH and water.

Count II

13. On September 23, 2012, the benzene strippers overflowed through the fans and out the vent stack.

14. The overflow went into the concrete pad and overflowed onto the ground on all four sides of the concrete containment berm and a portion of an aeration lagoon. The overflowed liquid was recovered.

Count III

15. On August 16, 2012, high levels of liquid occurred in both the Hydrocarbon Blowdown Drum and the Hydrocarbon Knockout Drum at the flare.

16. Due to the high levels, liquid hydrocarbons came out of the flare tip and ignited, causing a fire.

Count IV

17. On August 10, 2012, a seal blew out on the west NHT Reboiler Circulating Pump (H-P3D).

18. This blown seal caused a discharge of naphtha from the pump casing which caused a small fire to ignite.

Count V

19. On January 30, 2013, a leak occurred in the deethanizer reflux line coming out of Deethanizer Tower (SV-4) in the SATS Unit.

20. This resulted in a release of hydrogen sulfide and total hydrocarbon.

21. At this time, the parties are unaware of off-site injuries or off-site property damage as a result of the violations alleged in this CAFO.

22. Pursuant to section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), an owner/operator of a stationary source producing, processing, handling or storing substances listed pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, has a general duty to: (1) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (2) design and maintain a safe facility, taking such steps as are necessary to prevent releases; and (3) minimize the consequences of accidental releases that do occur.

23. Respondent is a "person" as that term is defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e).

24. The Facility is a "stationary source" as that term is defined by section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

25. Respondent is the "owner or operator" as those terms are defined by section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.

26. At the Facility, Respondent produces, processes, handles, or stores substances listed in, or pursuant to, CAA § 112(r)(3) or other extremely hazardous substances identified as such due to toxicity, reactivity, flammability, volatility, or corrosivity.

27. The substances identified in counts I-V are “other extremely hazardous substances” pursuant to 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and are regulated under that section.

28. The releases as identified in counts I-V at the facility between August 10, 2012, and January 20, 2013, constituted an “accidental release” in each count, as that term is defined by section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

29. Respondent failed to design and maintain a safe facility and did not take such necessary steps to prevent accidental releases by not fully utilizing commonly available and accepted practices to ensure safety.

30. Respondent’s failure constitutes violations of the general duty clause in section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

31. Respondent is therefore subject to the assessment of penalties pursuant to sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), for at least one day of violation of the general duty clause of section 112(r)(1) of the CAA, 42 U.S.C. §7412(r)(1) per each violation identified in Counts I-V above.

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

32. Pursuant to the authority granted in sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and taking into consideration the size of the Respondent’s business, the economic impact of the penalty on the Respondent’s business, the Respondent’s full compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of penalties previously

assessed for the same violation (if any), the economic benefit of noncompliance, and the seriousness of the violation, as well as other factors which justice may require, EPA and Respondent agree that an appropriate penalty to settle this matter is \$37,500 per incident. Respondent shall pay a total of \$187,500 to resolve the matters alleged in this CAFO.

33. Respondent shall pay the assessed penalty within thirty (30) days of the effective date of this CAFO. Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA – Region 6." Payment shall be remitted in one of three ways: regular U.S. Postal mail (including certified mail), or U.S. Postal Service express mail, the check should be remitted to:

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

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

U.S. Bank
Government Lockbox 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 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"

PLEASE NOTE: Docket number CAA-06-2013-3342 shall be clearly typed on the check to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. If payment is made by wire service, the wire transfer instructions shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter or wire transfer instructions to the following:

Chief, Surveillance Section (6EN-AS)
Compliance Assurance and Enforcement Division
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to these instructions will ensure that proper credit is given when penalties are received in the Region.

34. 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.

35. 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 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).

36. EPA will also assess a \$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 \$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.

B. PARTIES BOUND

37. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. RETENTION OF ENFORCEMENT RIGHTS

38. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting

conditions.

39. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

40. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Facility. Furthermore, 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.

41. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to the claims that have been specifically resolved pursuant to this CAFO.

D. COSTS

42. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

E. EFFECTIVE DATE

This CAFO becomes effective upon filing with the Regional Hearing Clerk.

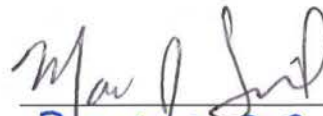
F. TERMINATION

This CAFO shall terminate upon Respondent's compliance with Section III.A. of this CAFO.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS
CONSENT AGREEMENT AND FINAL ORDER:**

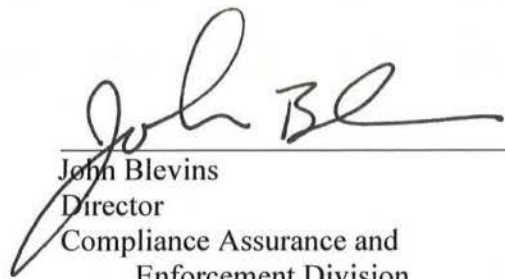
FOR THE RESPONDENT:

7/11/13
Date


President, Refining and
Marketing

FOR THE COMPLAINANT:

7.8.13
Date


John Blevins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

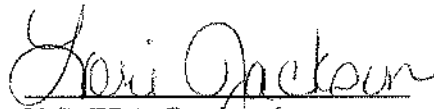
I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order (CAFO) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was placed in the United States Mail, to the following by the method indicated:

Via FIRST CLASS US MAIL

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: # 70030500000308752077

Jean Flores
Counsel for Respondent
Guida, Slavich, and Flores, P.C.
701 N.St. Paul, St. 200
Dallas, TX 75202

Date: 7-9-2013


U.S. EPA, Region 6
Dallas, Texas