

FILED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

1201 Elm Street, Suite 500  
Dallas, Texas 75270

21 DEC 28 PM 3: 52

REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of

Sunoco Partners Marketing & Terminals L.P. §  
Nederland LPG Terminal §

Respondent. §

Docket No. CAA-06-2022-3310

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**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

The U.S. Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Sunoco Partners Marketing & Terminals L.P., Nederland LPG Terminal (“Respondent”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 United States Code (U.S.C.) § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the General Duty Clause of the CAA, pursuant to Section 112 (r)(1) of the Act, 42 U.S.C. §7412(r)(1). Furthermore, this Consent Agreement and Final Order

serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.34, of the EPA's intent to issue an order assessing penalties for these violations.

**Parties**

3. Complainant is the Director of the Enforcement and Compliance Assurance Division of EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondent is Sunoco Partners Marketing & Terminals L.P., a company/corporation incorporated in the state of Texas and conducting business in the state of Texas.

**Statutory and Regulatory Background**

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The objective of Section 112(r) is to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

6. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), commonly referred to as the General Duty Clause, owners and operators of stationary sources 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, have a general duty in the same manner and the same extent as the Occupational Safety and Health Act, 29 U.S.C. § 654 et. seq., to identify hazards which may result from accidental 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.

7. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), mandates that the Administrator establish a threshold quantity for any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The list of regulated substances and respective threshold quantities is codified at 40 C.F.R. § 68.130.

8. 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), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA, including, but not limited to, the general duty clause, or a requirement or prohibition of any rule promulgated under the CAA, but other than those requirements specified in Sections 113(a)(1), 113(a)(2) or 113(d)(1)(A) of the CAA (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.

9. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to

\$37,500 for violations that occurred before November 2, 2015, and to \$48,762 for violations that occur after November 2, 2015, and are assessed after December 23, 2020.

**Definitions**

10. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

11. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(a)(9), defines “owner or operator” as any person who owns, leases, operates, controls, or supervises a stationary source.

12. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

13. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source,” in part, 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.

14. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), defines “extremely hazardous substance” as an extremely hazardous substance within the meaning of. Such substances include any chemical which may, as a result of short-term exposures associated with releases to the air,

cause death, injury, or property damage due to its toxicity, reactivity, flammability or corrosivity.<sup>1</sup>

The term includes, but is not limited to, regulated substances listed in Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and 40 C.F.R. 68.130. Also, the release of any substance that causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or that causes substantial property damage by blast, fire, corrosion, or other reaction would create a presumption that such substance is extremely hazardous.<sup>2</sup>

**EPA Findings of Fact and Conclusions of Law**

15. Respondent is, and at all times referred to herein was a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. §7602(e).

16. Respondent is the owner and operator of the facility located at: 2300 N. Twin City Highway, Nederland, TX 77627 (Facility).

17. The facility is a large marine terminal that provides storage and distribution services for refiners and other large transporters of crude oil. The facility receives, stores, and distributes crude oil, feed-stocks, lubricants, petrochemicals, and bunker oils (used for fueling ships and other marine vessels) and also blends lubricants.

18. On February 26, 2021, at 3:48 p.m. an accidental release of butane occurred at the Facility (the “Incident”). The release occurred on the butane tight line piping in the pipe rack in the propane and butane tank levy releasing 22,436 lbs. of butane into the atmosphere.

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<sup>1</sup> Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Sen. Report No. 228, 101<sup>st</sup> Congress, 1<sup>st</sup> Session 211 (1989).

<sup>2</sup> Id.



19. Once the leak was discovered, the butane unit and ship loading were shut down, emergency response was initiated, and the area was evacuated. The propane unit in close proximity to the leak location was also shut down. Once the area surrounding the leak was safe to access, the leak location was determined to be a sheared drain valve nipple on the tight line piping.

20. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, the EPA conducted an investigation on or about August 16, 2021 of the Facility, to determine Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r) (the "Investigation").

21. On August 31, 2021, the EPA sent Respondent a Notice of Potential Violation and Opportunity to Confer letter. On September 27, 2021, the EPA conferred with Respondent regarding the violations alleged herein and provided an opportunity for Respondent to submit additional information or materials.

22. The Facility is a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3.

23. Butane is a substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), in 40 C.F.R. § 68.130.

24. From the time Respondent first produced, processed, handled, or stored butane at the Facility, Respondent was subject to the requirements of the General Duty Clause in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

#### **EPA Findings of Violation**

25. The facts stated in the EPA Findings of Fact and Conclusions of Law are above herein incorporated.

26. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

**Count 1-General Duty Clause**

27. General Duty Clause [Clean Air Act § 112(r)(1)] - Design and maintain a safe facility taking such steps as are necessary to prevent releases and minimize the consequences of the accidental release.

28. The Respondent failed to design a safe facility to minimize the consequences of the accidental release which was caused by a hydraulic hammer event which led to structural pipe damage that led to the release. In addition, the design failures identified in the root cause analysis associated the leak to the failure to keep the product at the appropriate temperature with adequate pressure during stagnant conditions and not including a way of notifying the operator that the line changed in temperature. Ensuring that the facility's structural pipe system was adequate to detect a change in pressure and temperature would have provided notice to trained facility personnel to mitigate the duration and quantity of the butane release more quickly or avoided the release altogether.

29. Respondent's failure to design and maintain a safe facility taking such steps as were necessary to prevent releases and failure to minimize the consequences of the accidental release, are violations of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

**Consent Agreement**

30. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- a. admits the jurisdictional allegations set forth herein;

- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the issuance of any specified compliance or corrective action order, to the extent provided herein;
- e. consents to any conditions specified herein;
- f. consents to any stated Permit Action, to the extent applicable;
- g. waives any right to contest the allegations set forth herein; and
- h. waives its rights to appeal the Final Order accompanying this Consent Agreement.

31. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

32. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

**Penalty Payment**

33. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of thirty-nine thousand and ten dollars (\$39,010), as set forth below.

34. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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



or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

35. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Lorena Vaughn  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500 (ORC)  
Dallas, Texas 75270-2102  
[vaughn.lorena@epa.gov](mailto:vaughn.lorena@epa.gov); and

Tony Robledo  
Enforcement and Compliance Assurance Division  
Air Enforcement Branch  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500 (ECDAC)  
Dallas, Texas 75270-2101  
[robledo.tony@epa.gov](mailto:robledo.tony@epa.gov)

36. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

**Effect of Settlement and Reservation of Rights**

37. Respondent certifies by the signing of this Consent Agreement that it is presently

in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

38. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

39. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

#### **General Provisions**

40. By signing this Consent Agreement, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

41. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

42. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

43. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all

contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

44. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA: *mcdonald.ashley@epa.gov*

To Respondent: *Stephen.Heibel@energytransfer.com*

IT IS SO AGREED:

FOR THE RESPONDENT:


Date: \_\_\_\_\_

12/15/21



\_\_\_\_\_  
Sunoco Partners Marketing &  
Terminals L.P.

FOR THE COMPLAINANT:



Digitally signed by Seager, Cheryl  
DN: cn=Seager, Cheryl,  
email=Seager.Cheryl@epa.gov  
Date: 2021.12.15 16:58:55 -06'00'

Cheryl T. Seager  
Director  
Enforcement and  
Compliance Assurance Division  
U.S. EPA Region 6

**FINAL ORDER**

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. 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.

IT IS SO ORDERED.

for   
Thomas Rucki  
Regional Judicial Officer



**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was electronically delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270, and that a true and correct copy was sent this day in the following manner to the addresses:

Copy via email to Complainant:

[McDonald.Ashley@EPA.gov](mailto:McDonald.Ashley@EPA.gov)

Copy via email to Respondent:

[Stephen.Heibel@energytransfer.com](mailto:Stephen.Heibel@energytransfer.com)

Copy via email to Regional Hearing Clerk:

[Vaughn.lorena@EPA.gov](mailto:Vaughn.lorena@EPA.gov)

Ashley  
McDonald

Digitally signed by Ashley McDonald  
DN: cn=Ashley McDonald, o=Office of  
Regional Counsel, ou=ORC-ER,  
email=mcdonald.ashley@epa.gov,  
c=US  
Date: 2021.12.29 07:33:06 -06'00'

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Office of Regional Counsel  
U.S. EPA Region 6, Dallas, Texas