



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR - 5 2019

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David Buente
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Calumet Superior, LLC, docket no. CAA-05-2019-0016. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on April 5, 2019.

Pursuant to paragraph 30 of the CAFO, Superior Refining Company LLC must pay the civil penalty within 30 days of the filing date. Superior's check or electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Rachel Zander, Associate Regional Counsel, at (312) 353-1505.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Marshall".

Sarah Marshall, Chief
Air Enforcement and Compliance Assurance Branch (MI/WI)

Enclosure

cc: Todd E. Palmer, Michael Best & Friedrich LLP
Maria Hill, Wisconsin Dept. of Natural Resources

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. CAA-05-2019-0016
)
Calumet Superior, LLC n/k/a Superior)
Refining Company LLC) Proceeding to Assess a Civil Penalty
2407 Stinson Avenue)
Superior, Wisconsin) Under Section 113(d) of the Clean Air Act,
42 U.S.C. § 7413(d).
)
Respondent.)
_____)



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA or EPA), Region 5.
3. On or about November 8, 2017, Calumet Superior, LLC (Calumet) changed its name to Superior Refining Company LLC (Superior Refining). Respondent is Superior Refining, a company doing business in the State of Wisconsin.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling 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.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations alleged in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries. 60 Fed. Reg. 43244 (Aug. 18, 1995). Relevant to this CAFO, EPA has since amended these standards at 61 Fed. Reg. 7051 (Feb. 23, 1996), at 61 Fed. Reg. 29876, 29878 (June 12, 1996), 63 Fed. Reg. 44135, 44140 (Aug. 18, 1998); 66 Fed. Reg. 28840 (May 25, 2001), 74 Fed. Reg. 55670, 55683 (Oct. 28, 2009), and 78 Fed. Reg. 37133, 37145 (June 20, 2013), 80 Fed. Reg. 75178, 75237 (Dec. 1, 2015). These standards are codified at 40 C.F.R. Part 63, Subpart CC, 40 C.F.R. § 63.640.

10. 40 C.F.R. Part 63, Subpart CC, applies to petroleum refining process units and related emissions points located at a plant site that is a major source as defined in Clean Air Act § 112(a) and emit or have equipment containing or contacting one or more of the hazardous air pollutants listed therein. 40 C.F.R. § 63.640.

11. On February 1, 1993, Wisconsin Administrative Code (WAC) NR § 439 became effective as part of the federally enforceable state implementation plan (SIP) for the State of Wisconsin. 40 C.F.R. § 52.2570(c)(73)(i)(I). On January 1, 1994, WAC NR § 407 became

effective as part of the federally enforceable state implementation plan (SIP) for the State of Wisconsin. 40 C.F.R. § (76)(i)(A).

12. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), limits the EPA Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

13. The EPA Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

EPA's Factual Allegations and Alleged Violations

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

15. Superior Refining owns and operates petroleum refinery process units subject to National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Petroleum Refineries (40 C.F.R. Part 63, Subpart CC) that vent to the facility's flares. NESHAP Subpart CC is incorporated into Superior Refining's Title V Permit in Part I, Section II.A.

16. NESHAP Subpart CC requires compliance with certain portions of the NESHAP General Provisions (40 C.F.R. Part 63, Subpart A) as detailed in Table 6 of NESHAP Subpart CC.

17. Section 63.6(e)(1)(i) of NESHAP Subpart A (40 C.F.R. § 63.6(e)(1)(i)) requires air pollution control equipment to be operated in a manner consistent with safety and good air pollution control practices.

18. Superior Refining is subject to Standards of Performance for New Stationary Sources (NSPS) for Petroleum Refineries (40 C.F.R. Part 60, Subparts J and Ja), which require compliance with the NSPS General Provisions (40 C.F.R. Part 60, Subpart A).

19. Section 60.11(d) of NSPS Subpart A (40 C.F.R. § 60.11(d)) requires, to the extent practicable, that air pollution control equipment to be operated in a manner consistent with good air pollution control practices.

20. Superior Refining uses two flares to control emissions from its refinery process. The two flares covered under this Order are designated as the Primary Flare and the Backup Flare (collectively the "Covered Flares"). Among other things, the Primary Flare controls continuous emissions of refinery operations. It also controls unplanned emission events from these same operations. The Backup Flare is used only when the Primary Flare is not in operation.

21. Both Covered Flares are steam-assisted. Steam is added to the Vent Gas stream at the flare tip to enhance combustion and minimize the formation of visible emissions. Steam is added in proportion to the volume and composition of Vent Gas. It is possible to measure the amount of steam as a ratio of the mass of steam per unit mass of vent gas (lb/lb).

22. Published literature, flare test reports, and EPA documents explain the negative effects that steam can have on flares if applied in excessive amounts. The most prominent of these is a 1983 flare testing study funded jointly by the Chemical Manufacturers Association (CMA) and EPA, conducted by the flare manufacturer John Zink Company, and reported in both a March 1983 report issued by the CMA titled, "A Report on a Flare Efficiency Study," and a July 1983 report issued by EPA titled, "Flare Efficiency Study." EPA 600/2-83-052. The 1983 study included various tests to determine the efficiency of flares under a variety of operating

conditions. The tests performed included a range of steam flows. The report's authors indicated that excess steam-to-vent gas ratios (lb steam per lb vent gas) likely caused steam quenching of the flare during the tests. In particular, the reports noted that of all the various operating conditions applied during the flare tests, the only runs where combustion fell significantly below 98% were during tests when high steam-to-vent gas ratios were applied. Based on these findings, EPA, in the abstract of its report, concludes that "under conditions representing good industrial practice," combustion efficiencies at the sampling probe consistently were greater than 98%. Combustion efficiencies declined, however, "under conditions of excessive steam (steam quenching) and high exit velocities of low Btu content gases." The EPA report, at page 37, specifically states that the data collected shows, "[G]eneral tendencies for combustion efficiencies to decline at higher or lower than normal steam flows. This data suggests that steam-to-relief gas ratios ranging from 0.4 to 1.5 yield the best combustion efficiencies." Specifically, tests showed the following efficiencies at the following steam-to-vent gas (S/V) ratios:

Pounds of Steam to One Pound of Vent Gas	Combustion Efficiency (%)
3.45	99.7
5.67	82.18
6.86	68.95

23. EPA has identified other publicly-available studies and EPA reports that evaluate how flare combustion efficiency is affected by steam addition. The conclusions of these studies support those of EPA 600/2-83-052. In particular, several recent studies have been conducted

with the use of passive Fourier transform infrared spectroscopy that verify the conclusion reached in EPA 600/2-83-052.

24. Operating information provided by Calumet in its CAA Section 114 response of March 19, 2012 indicates operation of the Primary Flare over a wide range of S/V ratios, from 0.02 to 13.80 from September 10, 2009 through January 29, 2012.

25. Operating information provided by Calumet in its CAA Section 114 response of March 19, 2012 indicates operation of the Backup Flare from May 7th through 14th, 2008 with a S/V ratio of 17.73 for 167 hours.

26. The failure of Calumet to operate in accordance with the documents referenced in paragraph 23 constitutes a violation of 40 C.F.R. § 63.6(e) and 60.11(d) and Calumet's Title V permit.

27. On June 29, 2012, EPA issued to Calumet a Notice of Violation/Finding of Violation (NOV/FOV) alleging the violation in paragraphs 25 above.

28. On September 12, 2012, representatives of Calumet and EPA discussed the June 29, 2012 NOV/FOV.

Civil Penalty

29. Based on an analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, Respondent's cooperation to settle this matter, and the Supplemental Environmental Project (SEP) contained herein, Complainant has determined that an appropriate civil penalty to settle this action is \$25,000.

30. Respondent agrees to pay the \$25,000 civil penalty within 30 days after the effective date of this CAFO, by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must note Respondent's name and the docket number of this CAFO. Respondent agrees to send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the civil penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Rachel Zander (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

31. This civil penalty is not deductible for federal tax purposes.
32. If Respondent does not timely pay the entire civil payment as set forth in above, the entire unpaid balance of the civil penalty shall become due and owing upon written notice by EPA to Respondent of the delinquency. EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

33. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be ten (10) percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

Supplemental Environmental Project

34. Respondent agrees to complete a SEP designed to further protect the environment and public health by reducing emissions of related air pollutants to the environment. In particular, the SEP will reduce greenhouse gas emissions and other air pollutants from diesel-fired bus engines.

35. Respondent agrees to complete the SEP as follows. Respondent must provide \$75,000 (the "Funds") to the Superior School District of Superior, Wisconsin ("School District") for the sole purpose of purchasing, in whole or in part, an alternative-fuel school bus for the School District. In this case, an alternative-fuel school bus shall mean a bus operated solely on propane. The new bus will be selected by the school district and must be a replacement for a traditionally-fueled diesel school bus. The traditionally-fueled diesel school bus must be destroyed once the alternative-fuel school bus is put in service.

36. Respondent shall complete this SEP within 180 days of the effective date of this CAFO.

37. Respondent's total expenditures for this SEP must not be less than \$75,000. No funds counted toward completion of the SEP shall be deductible for federal tax purposes.

Respondent hereby certifies as follows:

I certify that the Superior Refining Company LLC is not required to perform or develop this SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that the Superior Refining Company LLC has not received, and is not negotiating to receive, credit for this SEP in any other enforcement action.

I certify that the Superior Refining Company LLC is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as this SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as this SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

38. Respondent agrees to submit a SEP Completion Report to EPA within 60 days of completion of the SEP. This Completion Report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any problems executing the SEP and the actions taken to correct the problems;
- c. Certification from the recipients that the funds were spent in conformity with the SEP;
- d. Certification or documentation demonstrating that the replaced traditionally-fueled school bus was destroyed or disassembled such that it will no longer be operated;
- e. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- f. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

39. Respondent agrees to submit the SEP Completion Report required by this CAFO

to:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

40. Respondent agrees that the SEP Completion Report will certify that the report is true and complete by including the following statement signed by a responsible corporate official or an authorized designee:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

41. Following receipt of the SEP Completion Report, EPA will notify Respondent in writing within 30 days of receipt of the report that:

- a. It has satisfactorily completed the SEP and the SEP Completion Report;
- b. There are deficiencies in the SEP as completed or in the SEP Completion Report and EPA will give Respondent 30 days to correct the deficiencies;
or
- c. It has not satisfactorily completed the SEP or the SEP Completion Report and EPA will seek stipulated penalties as described below.

42. If EPA disapproves of the SEP Completion Report, Respondent may object in writing within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as

required by EPA's decision, Respondent will pay stipulated penalties to the United States as specified below.

43. Respondent agrees that failure to submit a SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become subject to stipulated penalties specified below.

44. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay the following stipulated penalties to the United States:

<u>Penalty per Day</u>	<u>Period of Delay or Non-Compliance</u>
\$500	1 st through 30 ^h day
\$1500	30 th through 60 th day
\$3000	60 st day and beyond

Stipulated penalties shall not exceed a total of \$75,000.

45. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

46. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified above for payment of the civil penalty, and will pay interest and nonpayment penalties on any overdue amounts.

47. Any public statement that Respondent makes referring to the SEP must include the following language: "The Superior Refining Company LLC undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against the Superior Refining Company LLC for alleged violations of the Clean Air Act."

48. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within ten (10) days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

General Provisions

49. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following e-mail addresses: morris.james@epa.gov and zander.rachel@epa.gov (for Complainant), and dbuente@sidley.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

50. This CAFO resolves Respondent's liability for federal civil penalties only for the facts and violations alleged in this CAFO and in the June 29, 2012 NOV/FOV at Respondent's Facility.

51. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

52. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

53. This CAFO constitutes an "enforcement response," as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy, to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

54. The terms of this CAFO bind Respondent, its successors and assigns.

55. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.


56. Each party agrees to bear its own costs and attorneys' fees in this action.

57. This CAFO constitutes the entire agreement between the parties.

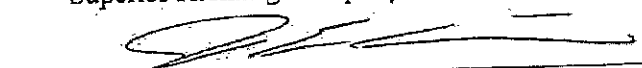
In the matter of: Calumet Superior, LLC n/k/a Superior Refining Company LLC
Consent Agreement and Final Order

Superior Refining Company LLC, Superior, Wisconsin, Respondent

4/1/19
Date


JERRY MILLER
Vice President
Superior Refining Company LLC


4/1/19
Date


~~SCOTT HOWARD~~ JEFFREY RINKER
Vice President
Superior Refining Company LLC

**In the matter of: Calumet Superior, LLC n/k/a Superior Refining Company LLC
Consent Agreement and Final Order**

United States Environmental Protection Agency, Complainant

4/5/19
Date



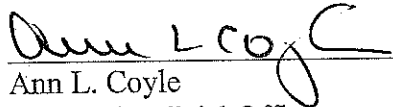
Edward Nam
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

**In the Matter of: Calumet Superior, LLC n/k/a Superior Refining Company LLC,
Superior, Wisconsin
Consent Agreement and Final Order
Docket No. CAA-05-2019-0016**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk, U.S. EPA, Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

4/5/19
Date



Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Calumet Superior, LLC n/k/a Superior Refining Company LLC of Superior,
Wisconsin
Docket Number: CAA-05-2019-0016

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number [CAA-05-2019-0016],
which was filed on [April 5, 2019],
in the following manner to the following addressees:

Copy by Certified Mail to
Respondent:

Jeffrey Rinker
President
Superior Refining Company LLC
2407 Stinson Avenue
Superior, Wisconsin 54880

Copy by E-mail to
Attorney for Complainant:

Rachel Zander
zander.rachel@epa.gov

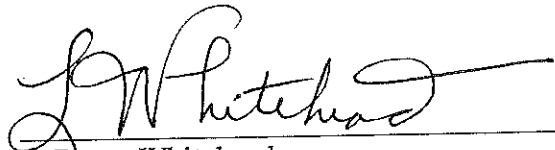
Copy by E-mail to
Attorney for Respondent:

David Buente
dbuente@sidley.com

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: April 5, 2019



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2643 7695