

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
BEFORE THE ADMINISTRATOR

FILED
2012 JAN 31 AM 11:00
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

NUSTAR REFINING, LLC

EPA DOCKET NO.
CAA-06-2012-3444

BEXAR COUNTY, TEXAS

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR A HEARING

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I.

STATEMENT OF AUTHORITY

1. This Complaint and Notice of Opportunity for a Hearing (Complaint) is issued to initiate an administrative action against NuStar Refining, LLC (Respondent) as authorized by 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) & 7413(d)(1)(B), and 40 C.F.R. §§ 22.13 and 22.34(b). The Complainant in this action is the Director, Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6, who has been delegated the authority to issue such complaints in EPA, Region 6.

2. Through this action, Complainant seeks an order assessing a civil administrative penalty for violations of CAA section 112(r)(1), 42 U.S.C. § 7413(r)(1). Complainant will show that Respondent owns and operates the NuStar San Antonio refinery, a petroleum refinery located in San Antonio, Bexar County, Texas (the Facility) and is subject to general duties under section 112(r)(1), which Respondent failed to fulfill leading up to and following an accidental jet fuel release and related fire on November 30, 2011, at the Facility's Crude Unit.

II.

STATUTORY AND REGULATORY BACKGROUND

3. Under CAA sections 113(a)(3) and 113(d)(1)(B), 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, a requirement or prohibition of any rule promulgated under the CAA, other than those requirements specified in CAA sections 113(a)(1), 113(a)(2) or 113(d)(1)(A), 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. As adjusted by the Civil Penalty Inflation Adjustment Rule of December 11, 2008 (73 Fed. Reg. 75340, 75346), 40 CFR § 19.4, the Administrator may assess a civil penalty of up to \$37,500 per day of violation for a violation occurring after January 12, 2009.

4. Under CAA section 112(r)(1), 42 U.S.C. §7412(r)(1), “[i]t shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty, in the same manner and to the same extent as section 654, title 29 of the United States Code, to identify hazards which may result from such 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.”

5. “Owner or operator” is defined in CAA section 112(a)(9), 42 U.S.C. §7412(a)(9), as any person who owns, leases, operates, controls, or supervises a stationary source.

6. “Stationary source” is defined in CAA section 112(r)(2)(C), 42 U.S.C. §7412(r)(2)(C), 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.

7. “Accidental release” is defined in CAA section 112(r)(2)(A), 42 U.S.C. §7412(r)(2)(A), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

III.

FACTUAL BASIS OF VIOLATIONS

8. As described by this Complaint, Respondent is a person and has violated a requirement of the CAA. EPA has jurisdiction over this action, which is authorized by CAA sections 113(a)(3) and 113(d)(1)(B), 42 U.S.C. §§ 7413(a)(3) & 7413(d)(1)(B).

9. Respondent is a “person” as that term is defined in CAA section 302(e), 42 U.S.C. § 7602(e), and within the meaning of CAA section 113(d), 42 U.S.C. § 7413(d). Respondent is a Delaware Limited Liability Company doing business in the State of Texas.

10. The Facility is a petroleum refinery located at 7811 South Presa Street in San Antonio, Texas, which has been in operation since the 1950s.

11. Respondent has owned and operated the Facility since approximately April 2011.

12. The Facility's buildings, equipment and operations comprise a "stationary source" as defined in CAA section 112(r)(2)(C).

13. The Facility produces, processes, handles or stores substances listed pursuant to CAA section 112(r)(3) in the Crude Unit, including propane, butane, isobutene and isopentane.

14. The Facility produces, processes, handles or stores jet fuel in the Crude Unit.

15. Jet fuel, as it is produced, processed, handled or stored in the Crude Unit at the Facility, is a flammable extremely hazardous substance containing of a mixture of hydrocarbons.

16. On November 30, 2011, an accidental release of jet fuel from broken piping in the Crude Unit at the Facility caused a fire that resulted in worker injury and property damage.

17. On November 30, 2011, Respondent's contractors were performing a permitted work project at the Facility to remove a section of three-quarter-inch pipe that served to drain one of the pumps moving jet fuel through the solvent stripper area of the Crude Unit. The permit to work (PTW) that Respondent issued for this project did not call for the use of lock out/tag out measures or measures to shut off and isolate power to the jet fuel pump. Respondent also did not identify the use of lock out/tag out measures or measures to shut off and isolate power to the jet fuel pump in pre-maintenance planning and walk-down.

18. A contractor employee initially attempted to dismantle the drain pipe by hand in accordance with the scope of the PTW. After these attempts failed, the contractor used pipe

wrenches but still could not dismantle the pipe. Then, two contractor employees used 18-inch and 24-inch pipe wrenches to dismantle the pipe, at which point a three-quarter-inch nipple segment of the pipe failed.

19. Jet fuel under pressure escaped through the damaged pipe and into the ambient air. The contractors left the pump area and reported the ongoing release to Respondent's operations center. Respondent's employees then shut down the jet fuel pump and closed the pump's discharge valve, but they failed to shut off a suction valve upstream of the jet fuel pump. As Respondent's employees left the pump area, the jet fuel release ignited, causing a fire in the Crude Unit that continued to burn until it was extinguished by Facility personnel and the San Antonio Fire Department.

20. The accidental release and fire injured contractor personnel and damaged the Facility's equipment. Jet fuel escaping from the broken drain pipe sprayed onto one of the contractor employees who was attempting to dismantle the pipe when the release occurred. The injured contractor was taken to an emergency clinic and reportedly suffered first and second degree facial burns from the incident. Approximately two barrels of jet fuel escaped through the damaged drain pipe and burned before the fire was extinguished. The fire damaged equipment in the Crude Unit, including the pump and piping lines.

21. The release and fire also caused Respondent to shut down the Crude Unit and evacuate non-essential personnel.

IV.

GENERAL DUTY CLAUSE VIOLATION

**Count 1. Respondent violated the General Duty Clause under CAA § 112(r)(1),
42 U.S.C. § 7412(r)(1).**

22. Complainant incorporates paragraphs 1-21 as if restated herein.

23. As the owner and operator of the Facility, Respondent is subject to the general duties enumerated in CAA section 112(r)(1).

24. Respondent failed to maintain a safe facility by taking steps necessary to prevent releases of extremely hazardous substances. Respondent failed to prevent the pipe replacement work from being performed in an unsafe manner, resulting in the pipe failure and jet fuel release and fire. Respondent's failure to ensure that its contractor performed the pump drain pipe replacement work in accordance with the work permit authorization allowed the work to be performed using unauthorized personnel and equipment including the use of two large pipe wrenches on the three-quarter-inch drain pipe. Respondent also failed to specify safe procedures in the work permit and in consultations with the contractor, including lock out/tag out procedures and isolation of the jet fuel pump energy supply.

25. Respondent could have prevented or reduced the jet fuel release through the use of appropriate safety measures, safe work practices and authorized personnel in connection with the work on the pump drain line.

26. The accidental jet fuel release and resulting fire injured a contractor employee, substantially damaged equipment in the Crude Unit, including a jet fuel pump and related process piping, and caused an evacuation of the Crude Unit.

27. Respondent failed to minimize the consequences of the November 30, 2011, accidental release of jet fuel at the Facility. Respondent's failure to ensure the use of safe work practices for the repair work exacerbated the release and fire. This includes the failure to use lock out/tag out procedures and to turn off and isolate the jet fuel pump power supply. Respondent's failure to shut-off the flow of jet fuel through the drain pipe sections before the repair work, as well as its failure to do so after the contractor reported the pipe's failure, also exacerbated the release and fire.

28. Respondent also failed to recognize a potential hazard associated with a release from piping moving jet fuel through the Crude Unit, including the piping in the solvent stripper area. This is a hazard that Respondent should have recognized. Respondent's industry recognizes hazards associated with working on or around flammable product piping such as the jet fuel line at the Facility's Crude Unit.

29. Therefore, Respondent failed to satisfy one or more of its general duties under CAA section 112(r)(1).

V.

PROPOSED PENALTY

30. Complainant incorporates paragraphs 1-29 as if restated herein. Pursuant to CAA section 113(e)(1), 42 U.S.C. § 7413(e)(1), in determining the amount of any penalty to be assessed, the Administrator shall consider (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 violation 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 violation, the economic benefit of noncompliance, and the seriousness of the violation.

31. In light of the facts alleged in this Complaint, and having considered the statutory penalty factors in CAA section 113(e)(1), 42 U.S.C. § 7413(e)(1), Complainant requests issuance of an administrative order against Respondent assessing a civil administrative penalty of \$37,500.00 for the violations alleged in Section IV of this Complaint.

VI.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

32. By issuance of this Complaint, Respondent is hereby notified of its opportunity to answer and request a hearing on the record in this matter.

33. If Respondent contests any material fact upon which this Complaint is based, contends that the amount of the proposed penalty is inappropriate, or contends that it is entitled

to judgment as a matter of law, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk for EPA Region 6 not later than thirty (30) days after being served with this Complaint.

34. Respondent's Answer shall clearly and directly admit, deny, or explain each of the factual allegations set forth in this Complaint with regard to which Respondent has knowledge. If Respondent has no knowledge of a particular factual allegation and states so in its Answer, the allegation will be deemed denied. The failure of Respondent to admit, deny or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

35. Respondent's Answer also shall state (a) the circumstances or arguments which are alleged to constitute the grounds of defense, (b) the facts which Respondent disputes, (c) the basis for opposing any proposed relief, and (d) whether a hearing is requested. A hearing on the issues raised by this Complaint and Respondent's Answer shall be held upon request of the Respondent in its Answer. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. §§ 554 and 556, and the Consolidated Rules of Practice, 40 CFR Part 22, a copy of which is included.

36. The Answer must be sent to:

Regional Hearing Clerk (6RC-D)
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

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In addition, Respondent is requested to send a copy of the Answer and all other documents that it files in this action to:

Mr. Jonathan Bull
Assistant Regional Counsel (6RC-ER)
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

37. As provided in 40 CFR § 22.17, if Respondent fails to file a written Answer within thirty (30) days of service of this Complaint, Respondent may be deemed to have admitted all allegations made in this Complaint and waived its right to a hearing. A Default Order may thereafter be issued, and the civil penalty assessed shall become due and payable without further proceedings thirty (30) days after a Default Order becomes final.

38. Respondent is further informed that 40 CFR Part 22 prohibits any ex parte (unilateral) discussion of the merits of this action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

VII.

SETTLEMENT CONFERENCE

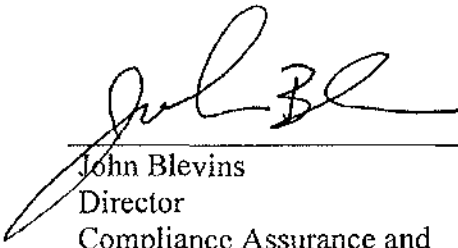
39. Whether or not Respondent requests a formal hearing, Respondent may request an informal conference in order to discuss the facts of this case and to arrive at settlement. To request a settlement conference, Respondent may contact Mr. Jonathan Bull, Assistant

Regional Counsel, at the address in paragraph 36 of this Complaint or by phone at (214) 665-8597.

40. Please note that a request for an informal settlement conference does not extend the 30-day period during which Respondent must submit a written Answer and, if desired, a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing procedure.

41. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of an informal conference. Respondent is advised that no penalty reduction will be made simply because such a conference is held. As set forth in 40 CFR § 22.18, any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement signed by the parties and their representatives and a Final Order issued by the Regional Administrator, EPA Region 6. The issuance of such Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

Date: 1.30.12



John Blevins
Director
Compliance Assurance and
Enforcement Division

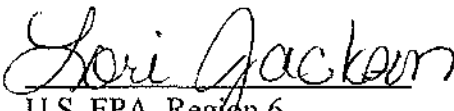
CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Complaint and Notice of Opportunity for Hearing (Complaint) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Wells Fargo Bank Tower, Dallas, Texas 75202-2733, and that a true and correct copy of the Complaint and the Consolidated Rules of Practice were placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL, RETURN RECEIPT REQUESTED: # 7010 2780 0002 43573711

CT CORPORATION SYSTEM
Registered Agent for NuStar Refining, LLC
350 N. St. Paul St., Ste. 2900
Dallas, TX 75201-4234 USA

Date: 1-31-2012


U.S. EPA, Region 6
Dallas, Texas