

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

2014 JUL 24 AM 9: 27

Docket No. US EPA - REGION IX
HEARING CLERK

IN THE MATTER OF:

Rancho LPG Holdings LLC

Respondent.

CAA-09-2014-00 01

CONSENT AGREEMENT
AND
FINAL ORDER PURSUANT TO
40 C.F.R. §§ 22.13 and 22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Rancho LPG Holdings LLC, a Delaware corporation registered to conduct business in California ("Respondent").

2. Respondent owns and operates the Rancho LPG facility at 2110 North Gaffey Street, in San Pedro, California (the "Facility"). The Facility's principal business is storage of butane and propane.

3. This Consent Agreement and Final Order Pursuant to 40 C.F.R. Sections 22.13 and 22.18, ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent, at the Facility, violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the regulations adopted pursuant thereto.

B. GENERAL ALLEGATIONS

4. Respondent is a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

5. The real property and improvements thereto located at the Facility are a “stationary source” as defined by Sections 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

6. Pursuant to Section 112(r) of the CAA, EPA established a “threshold quantity” (“TQ”) for each “regulated substance,” above which a facility shall be subject to the requirements of Section 112(r) of CAA. For substances designated as “regulated toxic substances” or “regulated flammable substances,” the TQs are specified at 40 C.F.R. § 68.130.

7. Propane, Chemical Abstract Service Registry (“CAS”) Number 74-98-6, is a “regulated flammable substance” listed under CAA § 112(r)(3) with a TQ of 10,000 pounds. 40 C.F.R. § 68.130, Table 3. Butane, CAS Number 106-97-8, is a “regulated flammable substance” listed under CAA § 112(r)(3) with a TQ of 10,000 pounds. 40 C.F.R. § 68.130, Table 3.

8. At all times relevant to this CA/FO, the Facility produced, used or stored more than 10,000 pounds each of butane and propane.

9. Respondent acquired the Facility in November 2008. At all times relevant to this CA/FO, Respondent has been the owner and operator of the Facility.

10. Under Section 112(r)(7) of the CAA and 40 C.F.R. § 68.12(a), the owner or operator of a covered stationary source must submit a Risk Management Plan (“RMP”), as provided in 40 C.F.R. §§ 68.150 - 68.185.

11. Pursuant to 40 C.F.R. § 68.10 and 40 C.F.R. § 68.150(b), the owner or operator of a covered stationary source must comply with the requirements of 40 C.F.R. Part 68 and submit its first RMP no later than the latest of the following dates:

(1) June 21, 1999;

(2) Three years after the date on which a regulated substance is first listed under § 68.130, or

(3) The date on which a regulated substance is first present above a TQ in a process.

12. The owner or operator of a covered stationary source must comply with the requirements
In Re: Rancho LPG

to review and update the RMP and submit it to EPA every five years after initial submittal for a 5-year update pursuant to Section 112(r)(7) of the CAA and 40 C.F.R. § 68.190(a).

13. Based on information observed by EPA and supplied by Respondent, EPA alleges that Respondent has violated Section 112(r)(7) of CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68.

14. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413.

15. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes the assessment of a civil penalty for any violation of Section 112(r) of CAA, 42 U.S.C. § 7412(r).

16. The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA. Delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, has re-delegated this authority with respect to enforcement of Section 112(r)(1) and (7) of the CAA to the Director of the Superfund Division. Regional Delegation of Authority R9-7-6-A, dated February 11, 2013.

17. In a letter dated January 15, 2013, the Department of Justice granted EPA authority to commence this administrative enforcement action pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

C. ALLEGED VIOLATIONS

COUNT I

(Failure to compile complete process safety information for the Facility)

18. Paragraphs 1 through 17 above are incorporated herein by this reference as if they were set forth here in their entirety.

19. At the time of EPA's inspection, the Facility's RMP did not evaluate potential seismic stresses on the support structure for the emergency flare system. Evaluation of potential seismic stresses on the support structure for the emergency flare system would comply with recognized

and generally accepted good engineering practices.

20. The Los Angeles Fire Department verified that, subsequent to EPA's inspection, Respondent had performed an evaluation of potential seismic stresses on the support structure for the emergency flare system and, by or about August 2011, had implemented modifications recommended as a result of the evaluation.

21. Therefore, EPA alleges that, prior to August 2011, Respondent had failed to compile complete process safety information for the Facility in a manner that complies with recognized and generally accepted good engineering practices, in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.65(a) and (d)(2). As of the time of this CA/FO, Respondent is in compliance with Section 112(r)(7) of the CAA, and 40 C.F.R. § 68.65(a) and (d)(2). No injunctive relief is required.

COUNT II

(Failure to analyze the consequences of failure of engineering and administrative controls)

22. Paragraphs 1 through 21 above are incorporated herein by this reference as if they were set forth here in their entirety.

23. At the time of EPA's inspection, the process hazard analysis in the Facility's RMP did not analyze the potential loss of the fire suppression water supply in the event of an earthquake. The fire suppression water system and its water supply is an engineering control in the process safety systems at the Facility.

24. As of May 2013, Respondent reports that it has analyzed the consequences of the potential loss of fire suppression water supply in the event of an earthquake and implemented modifications to its capabilities as a result of the analysis.

25. Therefore, EPA alleges that, prior to May 2013, Respondent had failed to analyze the consequences of failure of engineering and administrative controls, in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.67(c)(4). As of the time of this CA/FO, Respondent is in compliance with Section 112(r)(7) of the CAA, and 40

C.F.R. § 68.67(c)(4). No injunctive relief is required.

COUNT III

(Failure to ensure that inspection and testing procedures follow recognized and generally accepted good engineering practices)

26. Paragraphs 1 through 25 above are incorporated herein by this reference as if they were set forth here in their entirety.

27. At the time of EPA's inspection, Respondent could not demonstrate that it had conducted an internal inspection of Tank 1 at the Facility. Tank 1 went into service in approximately 1974. API Standard 653.6.4.2.1 is a recognized and generally accepted good engineering practice, and states "The interval from initial service date until the first internal inspection shall not exceed 10 years." The API Standard 653.6.4.2.1 nonetheless allows for the inspection interval from initial service to be increased to 30 years when there is a release prevention barrier and a risk based inspection assessment.

28. Respondent conducted an internal inspection of Tank 1 in approximately July 2012.

29. Therefore, EPA alleges that, prior to July 2012, Respondent had failed to ensure that inspection and testing procedures follow recognized and generally accepted good engineering practices, in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.73(d)(2). As of the time of this CA/FO, Respondent is in compliance with Section 112(r)(7) of the CAA, and 40 C.F.R. § 68.73(d)(2). No injunctive relief is required.

COUNT IV

(Failure to ensure inspection and testing procedures follow recognized and generally accepted good engineering practices)

30. Paragraphs 1 through 29 above are incorporated herein by this reference as if they were set forth here in their entirety.

31. At the time of EPA's inspection, Respondent could not demonstrate that it had conducted an inspection of the drain from the secondary containment basin at the Facility, which is a

passive mitigation system in the event of an accidental release of regulated substances. API Standard 570 is a recognized and generally accepted good engineering practice applicable to piping systems for “process fluids” and similar flammable fluid services at the Facility. The secondary containment basin is intended to hold liquid butane or propane in the event of an accidental release, and the drain pipes and valves similarly would be intended to retain (or release) such process fluids.

32. In approximately March 2012, Respondent included the drain from the secondary containment basin at the Facility in its mechanical integrity program and verified its integrity.

33. Therefore, EPA alleges that, prior to March 2012, Respondent had failed to ensure that inspection and testing procedures follow recognized and generally accepted good engineering practices, in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.73(d)(2). As of the time of this CA/FO, Respondent is in compliance with Section 112(r)(7) of the CAA, and 40 C.F.R. § 68.73(d)(2). No injunctive relief is required.

D. CIVIL PENALTY

34. Section 113(d) of the CAA, as adjusted by the Debt Collection Improvement Act of 1996, *see* 40 C.F.R. Part 19, authorizes a civil penalty of up to THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500) per day for each day after January 12, 2009, a violation of Section 112(r) of the CAA and the implementing regulations continues. *See* Table 1 of 40 C.F.R. § 19.4.

35. Based on the facts alleged herein and upon all the factors that the Complainant considers pursuant to the Combined Enforcement Policy for Clean Air Act Sections 112(r)(1) and 112(r)(7), and 40 C.F.R. Part 68 (“CEP”), dated June 20, 2012, including the nature, extent, and gravity of the violations, the Respondent’s ability to pay, prior history of violations, degree of culpability, any economic benefit, and such other matters as justice may require, the Complainant proposes that the Respondent be assessed, and Respondent agrees to pay **TWO HUNDRED SIXTY THOUSAND DOLLARS (\$260,000)** as the civil penalty for the violations alleged herein. The proposed penalty was calculated in accordance with the CEP.

E. ADMISSIONS AND WAIVERS OF RIGHTS

36. Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent pursuant to Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. Part 22. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

37. Respondent hereby waives any rights Respondent may have to a hearing or an appeal on any issue relating to the factual allegations or legal conclusions set forth in the CA/FO, including without limitation a hearing pursuant to Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2), or judicial review pursuant to Section 113(d)(4) of the CAA, 42 U.S.C. § 7413(d)(4).

Respondent hereby consents to the terms of this CA/FO and the issuance of this CA/FO without adjudication.

38. Respondent does not admit any liability arising out of the violations alleged in this CA/FO.

39. Respondent and Complainant recognize that this CA/FO is entered into for the purpose of compromising the disputed allegations set forth herein, has been negotiated in good faith, will avoid litigation and is fair, reasonable and in the public interest.

40. This CA/FO resolves the claims of Complainant for the allegations set forth herein.

F. PARTIES BOUND

41. This CA/FO shall apply to and be binding on Respondent and its agents, successors and assigns and upon all persons acting under or for Respondent, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section I) and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full and complete settlement of

the violations alleged herein.

42. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

43. Until termination of this CA/FO, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

44. The undersigned representative of Respondent hereby certifies that he is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

G. CERTIFICATION OF COMPLIANCE

45. Upon signing this CA/FO, Respondent certifies to EPA that it has fully complied with the requirements of Section 112(r) of the CAA that formed the basis for the violations alleged in the CA/FO, and the Facility is now in compliance with Section 112(r) of the CAA.

46. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

H. PAYMENT OF CIVIL PENALTY

47. Respondent consents to the assessment of and agrees to pay a civil penalty of **TWO HUNDRED SIXTY THOUSAND DOLLARS (\$260,000)** in settlement of the civil penalty claims made in this CA/FO.

48. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO, by sending a certified or cashier's check in the amount of **TWO HUNDRED SIXTY THOUSAND DOLLARS (\$260,000)**, payable to U.S. EPA," which shall be sent to:

U.S. Environmental Protection Agency
Fines and Penalties

Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

49. The check shall reference the name and docket number of the CA/FO, and shall be accompanied by a cover letter stating that payment is being made pursuant to this CA/FO. The cover letter and civil penalty shall be sent by certified mail, return receipt requested. Copies of the transmittals shall be sent to:

J. Andrew Helmlinger (ORC-3)
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

50. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty so that it is received by the due date will result in imposition of interest from the effective date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. §13.11. In addition, a twelve percent (12%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.

51. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

I. DELAY IN PERFORMANCE / STIPULATED PENALTIES

52. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

53. For failure to submit a payment to EPA by the time required in this CA/FO: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter.

54. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of the stipulated penalties that have accrued pursuant to this CA/FO.

55. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section H of this CA/FO.

56. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. Complainant reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with the CAA and its implementing regulations.

57. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

J. RESERVATION OF RIGHTS

58. EPA expressly reserves all rights and defenses that it may have.

59. Except as it relates to those matters resolved in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with

any of the requirements of this CA/FO, including without limitation, the assessment of penalties under the CAA or any other statutory, regulatory or common law enforcement authority of the United States. Except as expressly stated herein, this CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under the CAA or any other statutory, regulatory or common law enforcement authority of the United States.

60. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with the CAA or any other applicable local, state or federal laws and regulations.

61. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO.

62. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States. Notwithstanding compliance with the terms of this CA/FO, Respondent is not released from liability, if any, for the costs of any response actions taken by EPA.

K. MISCELLANEOUS

63. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

64. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

65. Each party to this action shall bear its own costs and attorneys' fees.

66. Complainant and Respondent consent to entry of this CA/FO without further notice.

In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

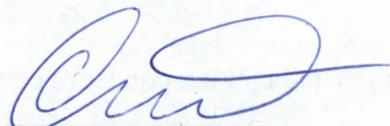
IT IS SO AGREED.

06-27-14
Date


Scott Sill
Vice President, Operations

Rancho LPG LLC

07-10-14
Date


Enrique Manzanilla, Director
Superfund Division
U.S. Environmental Protection Agency, Region IX

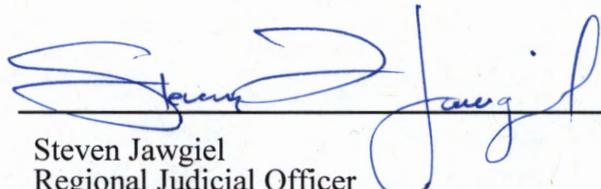
FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (“CA/FO”) (Docket No. CAA-9-2014-00⁰⁸) be entered and that Respondent pay a civil penalty of **TWO HUNDRED SIXTY THOUSAND DOLLARS (\$260,000)** payable to “Treasurer, United States of America,” in the manner and form specified in Section H of this CA/FO within thirty (30) days after the Effective Date, and complete any and all tasks required by this CA/FO.

THIS FINAL ORDER SHALL BE EFFECTIVE IMMEDIATELY.

07/24/14

Date



Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order in the matter of **RANCHO LPG HOLDINGS LLC**, with Docket # **CAA-09-2014-0001** has been filed with the Regional Hearing Clerk, Region IX and copies were sent:

By Certified Mail, Return Receipt Requested to Respondent:

Ron Conrow
Rancho LPG Holdings LLC
333 Clay Street, Suite 1600
Houston, Texas 77002

Certified Mail Receipt # 7010 2780 0000 8388 8020

Hand Delivered to:

Andrew Helmlinger
Office of Regional Counsel
U.S. EPA, Region 9, ORC 3
75 Hawthorne Street
San Francisco, CA 94105

7/24/14

Date



FOR : Steven Armsey
Acting Regional Hearing Clerk