

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 MAY 23 AM 11: 22
REGIONAL HEARING
CLERK

_____ x
)
In the Matter of:) CONSENT AGREEMENT AND
) FINAL ORDER
)
Sunoco, Inc.(R&M))
Eagle Point Facility)
Route 130 and I-295 South)
Westville, NJ) Docket Number: EPCRA-02-2008-4002
)
Respondent.)
_____ x

PRELIMINARY STATEMENT

1. Pursuant to Section 22.13 of the revised Consolidated Rules of Practice, 40 Code of Federal Regulations (“C.F.R.”) § 22.13(b) (64 Fed. Reg. 40181, July 23, 1999), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

2. This CA/FO is issued pursuant to Section 325 of the Emergency Planning and Community Right to Know Act (“EPCRA”), 42 U.S.C. § 11045. The Complainant in this action is the Director of the Emergency and Remedial Response Division of the United States Environmental Protection Agency, Region 2 (“EPA”), who has been delegated the authority to institute this action.

3. It has been agreed by the parties that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against Respondent without further litigation. To that end, the parties met on February 8, 2007. This CA/FO is being issued pursuant to said provisions of 40 C.F.R. Part 22. There has been no adjudication of any issue of fact or law in this matter. The following constitute EPA’s findings of fact and conclusions of law based on information of which Complainant was aware as of February 7, 2008. Respondent neither admits nor denies the specific findings of fact and conclusions of law contained in this CA/FO.

EPA’S FINDINGS OF FACT

1. Respondent owns and/or operates the Eagle Point Facility, located on Route 130 and I-295 South, Westville, New Jersey (the “Facility”).
2. Sulfur dioxide was, at all times relevant to this Complaint, used and/or created at

the Facility.

3. According to information provided by Respondent, on or about September 8, 2006, approximately 1,896 pounds of sulfur dioxide was released from Respondent's Facility. Respondent reported this release to the National Response Center and the New Jersey hotline on September 9, 2006, with follow-up written notice to the New Jersey Department of Environmental Protection, the New Jersey State Office of Emergency Management, and Gloucester County Emergency Management.

4. According to information provided by Respondent, on or about September 9, 2006, approximately 3,814 pounds of sulfur dioxide was released from Respondent's Facility. Respondent reported this release to the National Response Center and the New Jersey hotline on September 10, 2006, with follow-up written notice to the New Jersey Department of Environmental Protection, the New Jersey State Office of Emergency Management, and Gloucester County Emergency Management.

EPA'S CONCLUSIONS OF LAW

1. Section 304 of EPCRA, 42 U.S.C. § 11004, requires immediate notice by the owner or operator of a facility to the local emergency planning committees ("LEPCs") and the state emergency response commissions ("SERCs") for any area and state likely to be affected by the release, if a release of an extremely hazardous substance, referred to in Section 302 of EPCRA, occurs from a facility at which a hazardous chemical is produced, used, or stored.

2. Sulfur dioxide is an "extremely hazardous substance," as defined in Section 302(a) of EPCRA, 42 U.S.C. § 11002.

3. The reportable quantity for sulfur dioxide is 500 pounds, as specified in 40 C.F.R. Section 355.

4. In New Jersey, the SERC is the New Jersey Department of Environmental Protection.

5. Respondent failed to immediately notify the SERC for the area likely to be affected by the release of the September 8, 2006 and September 9, 2006 release of sulfur dioxide from the Facility.

6. The LEPC for the area where the Facility is located, and which would likely be affected by the releases of sulfur dioxide from the Facility is Gloucester County Emergency Management, Westville Borough and West Deptford Township.

7. Respondent failed to immediately notify the LEPC for the area likely to be affected by the release of the September 8, 2006 and September 9, 2006 release of sulfur dioxide

from the Facility.

8. Section 325 of EPCRA, 42 U.S.C. § 11045, provides for the assessment of penalties for violations of Section 304 of EPCRA.

9. Respondent violated the notification requirements of Section 304 of EPCRA, 42 U.S.C. § 11004, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 304 of EPCRA, 42 U.S.C. § 11004, and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits” (40 C.F.R. Part 22), it is hereby agreed by and between Complainant and Respondent, as follows:

1. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, pursuant to 40 C.F.R. § 22.18(b)(2), Respondent: **a)** admits the EPA has jurisdiction pursuant to Section 304 of EPCRA, 42 U.S.C. § 11004, to commence a civil administrative proceeding for the violations alleged in the “EPA Conclusions of Law” section, above; **b)** neither admits nor denies the EPA Findings of Fact and EPA Conclusions of Law set forth above; **c)** consents to the assessment of the civil penalty as set forth below; **d)** consents to the issuance of the Final Order accompanying this Consent Agreement; and **e)** waives its right to contest or appeal the attached Final Order in any forum.

2. Pursuant to 40 C.F.R. § 22.31(b), the effective date of this CA/FO shall be the date when such document is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

3. Commencing on the effective date of this CA/FO, Respondent shall maintain compliance with applicable provisions of Section 304 of EPCRA, 42 U.S.C. § 11004.

4. Respondent hereby certifies that, as of the time of its signature to this Consent Agreement, to the best of its knowledge and belief, it is in compliance with all applicable requirements of Section 304 of EPCRA, 42 U.S.C. § 11004.

5. This Consent Agreement is neither intended nor to be construed to waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of federal, State, or local law governing the Facility, and to maintain such compliance.

6. Respondent shall pay, by cashier’s or certified check, a civil penalty in the total amount of **thirteen thousand two hundred and ninety-nine dollars (\$13,299.00)**. Payment shall be made payable to the “Treasurer of the United States of America” and shall be mailed to

the United States Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO 63197-9000. The check shall be identified with a notation of the name and docket number of this case as follows: *In the Matter of Sunoco, Inc. (R&M), Docket Number: EPCRA-02-2008-4002.*

Payment of the penalty must be received at the above address on or before sixty (60) calendar days after the effective date of this CA/FO. Respondent shall also send a copy of the check to both:

Damaris Urdaz Cristiano
Assistant Regional Counsel,
United States Environmental Protection Agency,
290 Broadway, 17th Floor
New York, New York, 10007-1866

and

Karen Maples,
Region 2 Regional Hearing Clerk,
United States Environmental Protection Agency,
290 Broadway, 16th Floor
New York, New York, 10007-1866

a. Failure to pay the penalty in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.

b. Further, if timely payment is not received, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period following the due date in which the balance remains unpaid.

c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

d. Complainant shall endeavor to provide Respondent with timely notice of the filing of this CA/FO with the Regional Hearing Clerk of the EPA, Region 2.

7. The civil penalty Respondent shall pay, as set forth in this section, constitutes a penalty within the meaning of 26 U.S.C. § 162(f).

8. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liability that might have attached under Section 304

of EPCRA, 42 U.S.C. § 11004, as a result of the violations set forth in the “EPA Conclusions of Law” section, above, and Respondent’s payment of the civil penalty in accordance with the terms and conditions of this section shall resolve any such liability.

9. Respondent has read the Consent Agreement, understands its terms, voluntarily consents to its issuance and its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent also consents to the issuance of the accompanying Final Order.

10. Respondent waives its right to request and/or obtain a hearing on this Consent Agreement, or the accompanying Final Order, including any right to contest any of the EPA Findings of Fact and EPA Conclusions of Law set forth in said Consent Agreement and any right to contest any of the terms or conditions set forth in said Consent Agreement.

11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

12. Respondent consents to service of a copy of the executed Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

13. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce this CA/FO or any of its terms and conditions.

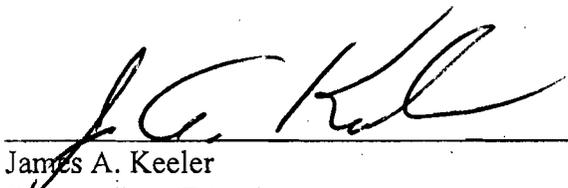
14. The signatory for the Respondent certifies that: **a)** he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and **b)** he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.

15. Each party hereto shall bear its own costs and fees in this matter.

16. Respondent reserves whatever rights it may have except as otherwise provided herein.

Consent Agreement In the Matter of Sunoco, Inc. (R&M)
Docket Number: EPCRA-02-2008-4002

For Respondent
Sunoco, Inc. (R&M):

A handwritten signature in black ink, appearing to read 'J. A. Keeler', is written over a horizontal line.

James A. Keeler
Sunoco, Inc. (R&M)
Eagle Point Facility
Facility Manager

Consent Agreement In the Matter of Sunoco, Inc. (R&M)
Docket Number: EPCRA-02-2008-4002

For Complainant
U.S. Environmental Protection Agency:



George Pavlou, Acting Director
Emergency and Remedial Response
Division, Region 2

Date: 5/14/08

FINAL ORDER

The Consent Agreement for the Matter of Sunoco, Inc. (R&M), Docket Number: EPCRA-02-2008-4002, signed on behalf of Respondent, Sunoco, Inc. (R&M), and the Environmental Protection Agency, is hereby approved, incorporated herein, and issued by U.S. EPA, as a Final Order. The effective date of this Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

5-16-08
Date

Alan J. Steinberg
Alan J. Steinberg
Regional Administrator
U.S. EPA, Region 2

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

_____	x	
)	
In the Matter of:)	<u>CONSENT AGREEMENT AND</u>
)	<u>FINAL ORDER</u>
Sunoco, Inc.(R&M))	
Eagle Point Facility)	
Route 130 and I-295 South)	
Westville, NJ)	Docket Number: EPCRA-02-2008-4002
)	
Respondent.)	
_____	x	

CERTIFICATION OF SERVICE

I certify that on the date noted below, I caused to be sent, by certified mail, return receipt requested, a copy of the foregoing "**Consent Agreement and Final Order**" to the following person at the address listed below:

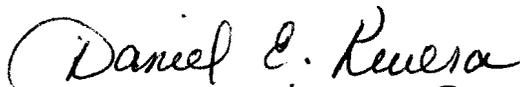
Original and copy by interoffice mail to:

Karen Maples
Regional Hearing Clerk
Region II
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007-1866;

Copy by certified mail, return receipt requested, to:

Attorney for Respondent:
Amy M. Lincoln
Beveridge & Diamond, PC
1350 I Street, N.W.
Suite 700
Washington, D.C. 20005-3311
Fax (202) 789-6190

5/22/08
Date


Name: Daniel E. Rivera