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EPA - REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

| | | |
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| In the Matter of: |) | DOCKET NO. CAA-10-2019-0075 |
| |) | |
| DELTA WESTERN, LLC, |) | CONSENT AGREEMENT |
| |) | |
| Seattle, Washington |) | |
| |) | |
| Respondent. |) | |
| |) | |

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d).

1.2. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Delta Western, LLC (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves a penalty assessment above \$378,852 and it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

2.4. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

A. STATUTORY AND REGULATORY BACKGROUND

i. New Source Performance Standards (“NSPS”)

3.1. Pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b), EPA has promulgated New Source Performance Standards (“NSPS”) for specified categories of stationary sources of air pollutants that are “new sources.” A “new source” is defined as “a stationary source, the construction or modification of which is commenced after the publication of NSPS

regulations or proposed regulations that are applicable to such source.” 42 U.S.C. § 7411(a)(2). A “stationary source” is defined as including “buildings, structures, facilities or installations that emit or may emit any air pollutant.” 42 U.S.C. § 7411(a)(3). The term “modification” means “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.” 42 U.S.C. § 7411(a)(4).

3.2. NSPS regulations apply to the owner or operator of any stationary source that contains an “affected facility,” the construction or modification of which is commenced after the date of publication of an NSPS (or, if earlier, the date of publication of any proposed standard) applicable to that facility. 40 C.F.R. § 60.1. “Affected facility” is defined, with reference to a stationary source, as any apparatus to which an NSPS is applicable. 40 C.F.R. § 60.2.

3.3. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits the operation of any “new source” of air pollutants in violation of an NSPS applicable to such source. Thus, a violation of an NSPS requirement is a violation of Section 111(e) of the CAA.

3.4. EPA has promulgated general provisions for the NSPS at 40 C.F.R. Part 60, Subpart A (“NSPS Subpart A”), which contain general provisions that apply to the owner or operator of any stationary source subject to an NSPS. 40 C.F.R. § 60.1(a).

Standards of Performance for Volatile Liquid Storage Vessels

3.5. EPA promulgated NSPS Subpart Kb – Standards of Performance for Volatile Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced After July 23, 1984, codified at 40 C.F.R. §§ 60.110b-117b, which applies to each storage vessel with a capacity greater than or

equal to 75 cubic meters (m³) that is used to store volatile organic liquids (“VOL”) for which construction, reconstruction, or modification is commenced after July 23, 1984.

3.6. In accordance with 40 C.F.R. § 60.112b(a), the owner or operator of each storage vessel either with a design capacity greater than or equal to 151 m³ containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 5.2 kilopascals (“kPa”) but less than 76.6 kPa or with a design capacity greater than or equal to 75 m³ but less than 151 m³ containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 27.6 kPa but less than 76.6 kPa, shall equip each storage vessel with one of the following: A fixed roof in combination with an internal floating roof meeting the requirements of 40 C.F.R. § 60.112b(a)(1); an external floating roof meeting the requirements of 40 C.F.R. § 60.112b(a)(2); a closed vent system and control device meeting the requirements of 40 C.F.R. § 60.112b(a)(3); or an equivalent system.

Standards of Performance for Bulk Gasoline Terminals

3.7. EPA promulgated NSPS Subpart XX – Standards of Performance for Bulk Gasoline Terminals, codified at 40 C.F.R. §§ 60.500-506, which applies to the total of all the loading racks at a “bulk gasoline terminal” constructed or modified after December 17, 1980, and which deliver liquid product into gasoline tank trucks.

3.8. The regulation at 40 C.F.R. § 60.501 defines a “bulk gasoline terminal” as a facility that has a gasoline throughput of greater than 75,700 liters per day.

3.9. In accordance with 40 C.F.R. §§ 60.502 and 60.8, the owner or operator of each bulk gasoline terminal containing an affected facility shall comply with the requirements of 40 C.F.R. § 60.502 not later than 180 days after initial startup of the affected facility. These requirements include:

3.9.1. In accordance with 40 C.F.R. § 60.502(a), “each affected facility shall be equipped with a vapor collection system designed to collect the total organic compounds vapors displaced from tank trucks during product loading.” In accordance with 40 C.F.R. § 60.502(b), “the emissions to the atmosphere from the vapor collection system due to the loading of liquid product into gasoline tank trucks are not to exceed 35 milligrams of total organic compounds per liter of gasoline loaded...”

3.9.2. In accordance with 40 C.F.R. § 60.502(d), “Each vapor collection system shall be designed to prevent any total organic compounds vapors collected at one loading rack from passing to another loading rack.”

3.9.3. In accordance with 40 C.F.R. § 60.502(e), “Loadings of liquid product into gasoline tank trucks shall be limited to vapor-tight gasoline tank trucks” using the method specified in 40 C.F.R. § 60.502(e).

3.9.4. In accordance with 40 C.F.R. § 60.502(f), “The owner or operator shall act to assure that loadings of gasoline tank trucks at the affected facility are made only into tanks equipped with vapor collection equipment that is compatible with the terminal’s vapor collection system.”

3.9.5. In accordance with 40 C.F.R. § 60.502(g), “The owner or operator shall act to assure that the terminal’s and the tank truck’s vapor collection systems are connected during each loading of a gasoline tank truck at the affected facility.”

3.9.6. In accordance with 40 C.F.R. § 60.502(h), “The vapor collection and liquid loading equipment shall be designed and operated to prevent gauge pressure in the delivery tank from exceeding 4,500 pascals (450 mm of water) during product loading.

This level is not to be exceeded when measured by the procedures specified in 40 C.F.R. § 60.503(d).”

3.9.7. In accordance with 40 C.F.R. § 60.502(j), “Each calendar month, the vapor collection system, the vapor processing system, and each loading rack handling gasoline shall be inspected during the loading of gasoline tank trucks for total organic compounds liquid or vapor leaks.”

ii. National Emissions Standards for Hazardous Air Pollutants

3.10. Sections 112(c), (d) and (k) of the CAA require EPA to publish a list of categories of “stationary sources” of hazardous air pollutants (“HAPs”), and to promulgate regulations establishing emission standards for major sources and certain area sources within those categories. 42 U.S.C. §§ 7412(c), (d) and (k). These standards are known as the National Emissions Standards for Hazardous Air Pollutants (“NESHAP”) for Source Categories, and are codified at 40 C.F.R. Part 63.

3.11. “Stationary source” under Section 112 has the same meaning as the term has under Section 111(a)(3) of the CAA. 42 U.S.C. § 7412(a)(3). Section 112 of the CAA defines “major source” as any stationary source, or group of stationary sources, located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, more than 10 tons per year of any single HAP or 25 tons per year or more of any combination of HAPs. 42 U.S.C. § 7412(a)(1). An “area source” is any source that is not a “major source.” 42 U.S.C. § 7412(a)(2).

3.12. EPA has promulgated general provisions for the NESHAPs at 40 C.F.R. Part 63, Subpart A (“NESHAP Subpart A”), which contain general provisions that apply as specified in the relevant NESHAP. 40 C.F.R. § 63.1(a)(4)(i). In particular, the regulation at

40 C.F.R. § 63.9(b) requires the affected source to submit an initial notification no later than 120 calendar days after the effective date of the relevant standard. In addition, the regulation at 40 C.F.R. § 63.9(h) requires the affected source to submit a notification of compliance status before the close of business on the 60th day following the completion of the relevant compliance demonstration activity specified in the relevant standard.

3.13. HAPs are defined at 40 C.F.R. § 63.2 to mean pollutants listed in, or pursuant to, Section 112(b) of the CAA.

3.14. “New source” is defined as a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under Section 112 establishing an emission standard applicable to such source. 42 U.S.C. § 7412(a)(4); see also 40 C.F.R. § 63.2.

3.15. “Existing Source” means any stationary source other than a new source. 42 U.S.C. § 7412(a)(10); see also 40 C.F.R. § 63.2.

3.16. Pursuant to 40 C.F.R. § 63.4(a), no “owner or operator” shall operate any “affected source” in violation of an applicable NESHAP, except under an extension of compliance or exemption from compliance as provided in that section or in CAA Section 112(i)(4), 42 U.S.C. § 7412(i)(4). An “affected source” is defined as a “collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112 of the [CAA].”

40 C.F.R. § 63.2.

NESHAP for Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities

3.17. Pursuant to Sections 112(c) and (k) of the CAA, on January 10, 2008, EPA promulgated Part 63, Subpart BBBBBB (“NESHAP 6B”) for Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities, codified at 40 C.F.R. §§ 63.11080-11100. 73 Fed. Reg. 1916. NESHAP 6B applies to the owner or operator of each bulk gasoline terminal, pipeline breakout station, pipeline pumping station, and bulk gasoline plant, as those terms are defined at 40 C.F.R. §§ 63.11081 and 63.11100, that is located at, or is part of, an area source of HAPs. The term “area source” means “any stationary source of hazardous air pollutants that is not a major source.” In accordance with 40 C.F.R. § 63.11083, existing affected sources are required to comply with NESHAP 6B no later than January 10, 2011.

3.18. The regulation at 40 C.F.R. § 63.11100 defines a “bulk gasoline terminal” as a facility that has a gasoline throughput of greater than 75,700 liters per day.

3.19. The NESHAP Subpart A provisions that apply to NESHAP 6B are specified in Table 3 of 40 C.F.R. Part 63, Subpart BBBBBB, and include the definitions in 40 C.F.R. § 63.2 and the prohibition in 40 C.F.R. § 63.4(a).

3.20. The specific requirements of NESHAP 6B include:

3.20.1. In accordance with 40 C.F.R. § 63.11087(f), if the owner and operator’s gasoline storage tank is subject to, and complies with, the control requirements of 40 C.F.R. Part 60, Subpart Kb, the storage tank will be deemed in compliance with NESHAP 6B.

3.20.2. In accordance with Table 1 to NESHAP 6B and 40 C.F.R. § 63.11087(a), owners or operators of a gasoline storage tank with capacity of greater than or equal to 75 cubic meters must “reduce emissions of total organic HAP or TOC by 95 weight-percent

with a closed vent system and control device, as specified in [40 C.F.R.] § 60.112b(a)(3)...” or install floating roofs in compliance with Sections 2(b)-(d) of Table 1 no later than January 10, 2011.

3.20.3. In accordance with 40 C.F.R. §§ 63.11087(d), 63.11093(a), and 63.9(b), submit an initial notification no later than 120 calendar days after January 10, 2008.

3.20.4. In accordance with 40 C.F.R. §§ 63.11087(d), 63.11093(b) and 63.9(h), submit a Notification of Compliance Status before the close of business on March 11, 2011.

3.20.5. In accordance with 40 C.F.R. §§ 63.11087(e) and 63.11095(a), submit a semiannual compliance report to the Administrator that includes the information specified in 40 C.F.R. § 63.11095(a).

3.20.6. In accordance with 40 C.F.R. §§ 63.11087(e), 110089(f), and 63.11095(b), submit an excess emissions report to the Administrator at the time the semiannual compliance report is submitted.

3.20.7. In accordance with 40 C.F.R. § 63.11094, keep records as specified in 40 C.F.R. § 60.115b or 40 C.F.R. § 63.1065, as applicable.

3.20.8. In accordance with 40 C.F.R. § 63.11095, submit semiannual reports to the EPA Administrator that include the information required by 40 C.F.R. § 60.115b or 40 C.F.R. § 63.1066, as applicable.

3.20.9. In accordance with 40 C.F.R. §§ 63.11087(c) and 63.11092(e), conduct performance tests or inspections of the applicable vapor control system.

NEHSAP for Gasoline Dispensing Facilities

3.21. Pursuant to Section 112(c) and (k) of the CAA, on January 10, 2008, EPA promulgated Part 63, Subpart CCCCCC (“NESHAP 6C”) for Gasoline Dispensing Facilities, codified at 40 C.F.R. §§ 63.11110-11132. 73 Fed. Reg. 1916. NESHAP 6C applies to the owner or operator of each gasoline dispensing facility (“GDF”), as defined in 40 C.F.R. § 11132, that is located at, or is part of, an area source of HAPs.

3.22. The NESHAP Subpart A provisions that apply to NESHAP 6C are specified in Table 3 of 40 C.F.R. Part 63, Subpart CCCCCC, and include the definitions in 40 C.F.R. § 63.2 and the prohibition in 40 C.F.R. § 63.4(a).

3.23. In accordance with 40 C.F.R. §§ 63.11117(e) and 63.11124(a)(1), owners and operators of GDFs subject to NESHAP 6C must “submit an Initial Notification that you are subject to [NESHAP 6C]” no later than May 9, 2008, or at the time the GDF becomes subject to the requirements of 40 C.F.R. §§ 63.11117.

3.24. In accordance with 40 C.F.R. §§ 63.11117(e) and 63.11124(a)(2), owners and operators of GDFs subject to NESHAP 6C must “submit a Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority” within 60 days of the applicable compliance date in 40 C.F.R. § 11113, which for existing sources is January 10, 2011.

B. GENERAL ALLEGATIONS

3.25. Respondent is a corporation incorporated in the State of Washington. Therefore, Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

3.26. Respondent is the owner and operator of the bulk gasoline terminal located at 120 Mt. Roberts Street, Juneau, Alaska (“Juneau Terminal”).

3.27. Between June 20, 1994, and December 2, 1994, Respondent installed three fixed roofed gasoline storage tanks at the Juneau Terminal: Tank #2, Tank #3, and Tank #8. Tank #2, Tank #3, and Tank #8 all have capacities greater than 151 m³.

3.28. At no time since installation have Tank #2, Tank #3, or Tank #8 been equipped with a closed vent system and control device or floating roofs.

3.29. Gasoline, as stored in Tank #2, Tank #3, and Tank #8, has a maximum true vapor pressure equal to or greater than 5.2 kPa but less than 76.6 kPa.

3.30. Between June 20, 1994, and December 2, 1994, Respondent installed one cargo tank truck gasoline loading rack at the Juneau Terminal.

3.31. Gasoline is a volatile organic liquid (VOL) as that term is defined by 40 C.F.R. § 60.111b.

3.32. The Juneau Terminal receives gasoline by barge.

3.33. The Juneau Terminal is a “stationary source” as that term is defined in Sections 111(a)(3) and 112(a)(3) of the Act, 42 U.S.C. §§ 7411(a)(3), 7412(a)(3).

3.34. The Juneau Terminal is an “area source” of HAPs as that term is defined in NESHAP 6B.

3.35. Effective June 24, 2003, the Alaska Department of Environmental Conservation issued Respondent a Pre-Approved Emission Limit (AQ0809PL101P) that contained a condition restricting the Juneau Terminal’s gasoline throughput to 19,900 gallons per day.

3.36. On at least one day since August 29, 2008, inclusive, the Juneau Terminal has had a gasoline throughput of greater than 20,000 gallons per day.

3.37. Therefore, the Juneau Terminal meets the definition of bulk gasoline terminal in 40 C.F.R. §§ 60.501 and 63.11100 and Respondent operates the Juneau Terminal as an area source for the purposes of the applicability of 40 C.F.R. Part 63, Subpart BBBBBB.

3.38. Respondent commenced operation of the Juneau Terminal on or around December 2, 1994.

3.39. Tank #2, Tank #3, and Tank #8 are affected facilities subject to the New Source Performance Standard for Volatile Organic Liquid Storage Vessels codified at 40 C.F.R. Part 60, Subpart Kb.

3.40. At all times relevant to this Consent Agreement, Respondent owned and operated six GDFs located in Juneau, Dutch Harbor, Haines, and Sitka, Alaska.

3.41. Each of the six GDFs discussed in Paragraph 3.40, above, meet the definition of “gasoline dispensing facility” in 40 C.F.R. § 60.11132.

3.42. Each of the six GDFs discussed in Paragraph 3.40, above, are located at “area sources” of HAPs as defined by Section 112(a)(2) of the CAA, 42 U.S.C. § 7412(a)(2). Therefore, at all times relevant to this Consent Agreement, the six GDFs discussed in Paragraph 3.40, above, have been subject to the requirements of NESHAP 6C.

3.43. On April 9, 2019, EPA issued an Administrative Compliance Order on Consent to Respondent, under Section 113 of the CAA, 42 U.S.C. § 7413, memorializing certain actions Respondent must take to come into compliance with the regulations cited in this Consent Agreement.

C. ALLEGED VIOLATIONS

Counts 1 through 2: Failure to Install Control Device(s) on Tank #2, Tank #3, and Tank #8 required by 40 C.F.R. Part 60, Subpart Kb and NESHAP 6B

3.44. Respondent was required to comply with 40 C.F.R. Part 60, Subpart Kb on August 29, 2008, by installing a control device on Tank #2, Tank #3, and Tank #8 that meets the requirements of 40 C.F.R. § 60.112b.

3.45. In accordance with 40 C.F.R. § 63.11087(f), Respondent was required to comply with NESHAP 6B by complying with control requirements in 40 C.F.R. Part 60, Subpart Kb applicable to Tank #2, Tank #3, and Tank #8.

3.46. Between at least September 1, 2014, and the present, Respondent failed to comply with the control requirements of 40 C.F.R. Part 60, Subpart Kb for Tank #2, Tank #3, and Tank #8, in violation of 40 C.F.R. § 60.112b, 40 C.F.R. § 63.11087(f), and Sections 111 and 112 of the Clean Air Act, 42 U.S.C. §§ 7411-12.

Counts 3 through 8: Failure to Conduct Inspections, Keep Records, and Submit Reports required by 40 C.F.R. Part 60, Subpart Kb and NESHAP 6B

3.47. Between at least September 1, 2014, and the present, Respondent violated the following requirements applicable to Tank #2, Tank #3, and Tank #8 at the Juneau Terminal:

3.47.1. Respondent failed to visually inspect the control device required by 40 C.F.R. §§ 60.112b and 63.11087 on Tank #2, Tank #3, and Tank #8 in violation 40 C.F.R. §§ 60.113b and 63.11092(e) and Sections 111 and 112 of the Clean Air Act, 42 U.S.C. §§ 7411-12.

3.47.2. Respondent failed to keep records of inspections required to be performed on the control device required by 40 C.F.R. §§ 60.112b and 63.11087 in violation of

40 C.F.R. §§ 60.115b(a)(2) and 63.11094 and Sections 111 and 112 of the Clean Air Act, 42 U.S.C. §§ 7411-12.

3.47.3. Respondent failed to furnish the EPA Administrator with the reports required by 40 C.F.R. § 60.115b(a)(1) and 63.11095(a)(1) in violation of 40 C.F.R. §§ 60.115b(a)(1) and 63.11095 and Sections 111 and 112 of the Clean Air Act, 42 U.S.C. §§ 7411-12.

Count 9: Failure to Install a Vapor Collection System for the Tank Truck Loading Rack as Required by 40 C.F.R. § 60.502

3.48. The cargo tank truck gasoline loading rack at the Juneau Terminal is an affected facility subject to the New Source Performance Standard for Bulk Gasoline Terminals codified at 40 C.F.R. Part 60, Subpart XX.

3.49. Therefore, Respondent was required to comply with 40 C.F.R. Part 60, Subpart XX, by at least February 25, 2009, by installing a vapor collection system designed to collect the total organic compound vapors displaced from tank trucks during product loading that meets the requirements of 40 C.F.R. § 60.502.

3.50. At no time since installation has the cargo tank truck gasoline loading rack at the Juneau Terminal been equipped with a vapor collection system designed to collect the total organic compounds vapors displaced from tank trucks during product loading.

3.51. Therefore, between at least September 1, 2014, and the present, Respondent violated 40 C.F.R. § 60.502 and Section 111 of the Clean Air Act, 42 U.S.C. §§ 7411.

Counts 10 through 14: Failure to Operate the Vapor Collection System for the Tank Truck Loading Rack as required by 40 C.F.R. § 60.502

3.52. Between at least September 1, 2014, and the present, Respondent violated the following requirements applicable to the tank truck gasoline loading rack at the Juneau Terminal:

3.52.1. Respondent failed to ensure that “Loadings of liquid product into gasoline tank trucks shall be limited to vapor-tight gasoline tank trucks” using the method specified in 40 C.F.R. § 60.502(e) in violation of 40 C.F.R. § 60.502(e).

3.52.2. Respondent failed to “act to assure that loadings of gasoline tank trucks at the affected facility are made only into tanks equipped with vapor collection equipment that is compatible with the terminal’s vapor collection system” in violation of 40 C.F.R. § 60.502(f).

3.52.3. Respondent failed to “act to assure that the terminal’s and the tank truck’s vapor collection systems are connected during each loading of a gasoline tank truck at the affected facility” in violation of 40 C.F.R. § 60.502(g).

3.52.4. Respondent failed to design and operate the vapor collection and liquid loading equipment “to prevent gauge pressure in the delivery tank from exceeding 4,500 pascals (450 mm of water) during product loading. This level is not to be exceeded when measured by the procedures specified in 40 C.F.R. § 60.503(d)” in violation of 40 C.F.R. § 60.502(h).

3.52.5. Respondent failed to inspect “[e]ach calendar month, the vapor collection system, the vapor processing system, and each loading rack handling gasoline . . . during the loading of gasoline tank trucks for total organic compounds liquid or vapor leaks” in violation of 40 C.F.R. § 60.502(j).

**Counts 15 through 20: Failure to Timely Submit Initial Notification as Required by
40 C.F.R. § 11124**

3.53. Each of the six GDFs discussed in Paragraph 3.40, above, were “existing sources” and therefore were required to comply with NESHAP 6C by January 10, 2011.

3.54. At all times relevant to this Consent Agreement, each of the six GDFs discussed in Paragraph 3.40, above, were subject to the requirements of 40 C.F.R. § 63.11117.

3.55. In accordance with 40 C.F.R. § 11124, each owner or operator of a GDF subject to the requirements of 40 C.F.R. § 63.11117 must submit an initial notification by May 9, 2008, or at the time the GDF becomes subject to the requirements of 40 C.F.R. § 63.11117.

3.56. Respondent failed to submit the initial notification for the six GDFs discussed in Paragraph 3.40, above, until March 30, 2017, in violation of 63.11117, 63.11124(a)(1), and 63.11124(a)(2).

D. ENFORCEMENT AUTHORITY

3.57. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 per day of violation for violations that occurred after December 6, 2013, through November 2, 2015, and \$47,357 per day of violation for violations that occurred after November 2, 2015.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$400,000 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

John Keenan
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
keenan.john@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty under the

CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

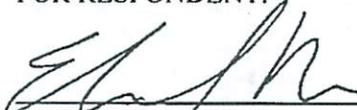
4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

8-8-19

FOR RESPONDENT:



ELIZABETH Y. RICE
Vice-President, Finance
Delta Western, LLC

DATED:

8/12/2019

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance
Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

| | | |
|---------------------|---|-----------------------------|
| In the Matter of: |) | DOCKET NO. CAA-10-2019-0075 |
| |) | |
| DELTA WESTERN, LLC, |) | FINAL ORDER |
| |) | |
| Seattle, Washington |) | |
| |) | |
| Respondent. |) | |
| |) | |

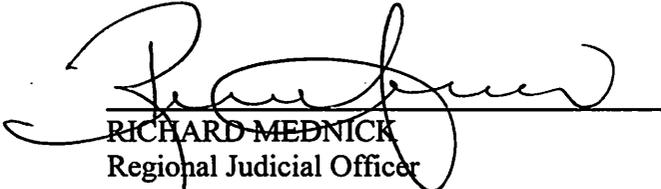
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 15th day of August, 2019.



RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: DELTA WESTERN, LLC, Docket No.: CAA-10-2019-0075**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Brett S. Dugan
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Elizabeth J. Rice
Vice-President, Finance
Delta Western, LLC
450 Alaskan Way South, Suite 707
Seattle, Washington 98104

Thomas Wood
Stoel Rives LLP
760 SW Ninth Ave, Suite 3000
Portland, Oregon 97205

DATED this 16 day of August 2019.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10