

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 SEP 30 PM 4:39

DOCKET NO.: CAA-08-2014-0016

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:

Moyle Petroleum Company
P.O. Box 2860
Rapid City, South Dakota 57709-2860

Respondent

)
)
) **COMBINED COMPLAINT AND**
) **CONSENT AGREEMENT**
)
)
)

Complainant, the U.S. Environmental Protection Agency, Region 8 (EPA), and Respondent, Moyle Petroleum Company (Respondent) (together, the Parties), hereby consent and agree as follows:

1. This Combined Complaint and Consent Agreement (CCCA) is entered into by the Parties pursuant to sections 113(a)(3)(A) and 113(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(3)(A) and 7413(d), for alleged violations of 40 C.F.R. Part 63, Subpart CCCCCC, National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Gasoline Dispensing Facilities. This proceeding is subject to EPA's *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (Rules of Practice), 40 C.F.R. part 22.
2. The undersigned EPA official has been properly delegated the authority to enter into this CCCA.
3. 40 C.F.R. § 22.13(b) provides that where the Parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a CCCA.
4. The Parties agree that the settling of this action and refraining from the adjudication of any issue of fact or law, with regard to the issues herein, is in their interest and in the public interest.
5. Respondent consents to the terms of this CCCA, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

6. Respondent admits the jurisdictional allegations in this CCCA and neither admits nor denies all remaining allegations, terms and conditions contained herein.

7. Respondent waives any and all claims for relief, and otherwise available rights to judicial or administrative review or other remedies which the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

STATUTORY AND REGULATORY FRAMEWORK

8. Congress enacted section 112 of the CAA, 42 U.S.C. § 7412, authorizing the EPA to regulate sources of hazardous air pollutants and requiring the EPA to establish National Emission Standards for Hazardous Air Pollutants (NESHAPs).

9. The EPA has promulgated NESHAPs for “Source Category: Gasoline Dispensing Facilities” at 40 C.F.R. Part 63, Subpart CCCCCC, §§ 63.11110 through 11132. 73 Fed. Reg. 1945 (Jan. 10, 2008).

10. Pursuant to 40 C.F.R. § 63.11118(b)(1), each owner or operator of a gasoline dispensing facility (GDF) with a monthly throughput of 100,000 gallons of gasoline or more must install a vapor balance system on gasoline storage tanks that meet the design criteria set forth under paragraphs (a) through (h) of Table 1 (Table 1) to Subpart CCCCCC.

11. Pursuant to 40 C.F.R. § 63.11120(a)(1), each owner or operator of a GDF with a monthly throughput of 100,000 gallons of gasoline or more, operating a vapor balance system required under 40 C.F.R. § 63.11118(b)(1), must:

- a) conduct initial compliance demonstration tests to demonstrate compliance with the leak rate and cracking pressure requirements, specified in item 1(g) of Table 1, for pressure-vacuum vent valves installed on gasoline storage tanks, and conduct follow-up compliance demonstration tests every three years after the initial test; and

- b) conduct initial compliance demonstration tests to demonstrate compliance with the static pressure performance requirement specified in item 1(h) of Table 1 for the vapor balance system by conducting a static pressure test on the gasoline storage tanks, and conduct follow-up compliance demonstration tests every three years after the initial tests.

12. Pursuant to 40 C.F.R. § 63.11124(a)(2), each owner or operator of a GDF with a monthly throughput of 10,000 gallons of gasoline or more must submit a Notification of Compliance Status to the applicable EPA Regional Office, signed by a responsible official who must certify its accuracy, must indicate whether the source has complied with the requirements of Subpart CCCCCC, and must indicate whether the facilities' monthly throughput is calculated based on the volume of gasoline loaded into all storage tanks or on the volume of storage dispensed from all storage tanks. This notice must be submitted within 60 days of the applicable compliance date.

RESPONDENT

13. Respondent is a company incorporated and headquartered in the state of South Dakota.

14. Respondent owns and operates GDFs, as defined under 43 C.F.R. § 63.11132, as part of Respondent's chain of "Common Cents" convenience stores.

15. Respondent owns and operates 13 GDFs in South Dakota, 12 GDFs in Utah, and six GDFs in Wyoming. Each of these GDFs has a monthly throughput of 100,000 gallons of gasoline or more.

16. Respondent is a "person" as defined in section 302(3) of the CAA, 42 U.S.C. § 7602(e), and is an owner and operator of sources subject to the NESHAPs for the source category of GDFs found at 40 C.F.R. Part 63, Subpart CCCCCC.

FINDINGS OF FACT AND VIOLATION

17. In a letter dated May 2, 2013, Respondent provided notice to the EPA that it had conducted an environmental audit of its GDFs in South Dakota, Utah, and Wyoming, and determined that on March 1, 2013, it had discovered potential violations of Subpart CCCCCC at four of its GDFs in South Dakota and five of its GDFs in Wyoming. These potential violations consisted of: failure to install vapor

balance systems in violation of 40 C.F.R. § 63.11118(b)(1); failure to submit Notices of Compliance Status to the EPA in violation of 40 C.F.R. § 63.11124(a)(2); and failure to conduct initial compliance tests in violation of 40 C.F.R. § 63.11120(a)(1).

18. Respondent further stated that it could not confirm the compliance status of six of its GDFs located in Utah.

19. In a letter dated February 25, 2014, Respondent supplemented its self-disclosure to the EPA, stating that on May 27, 2013, it had discovered potential violations at 11 of its GDFs in Utah. These potential violations consisted of: failure to conduct the three-year compliance tests of its vapor balance systems in violation of 40 C.F.R. § 63.11120(a)(1) and failure to file Notices of Compliance Status to the EPA in violation of 40 C.F.R. § 63.11120(a)(1).

20. Based upon information received from Respondent, the EPA confirmed that the violations as reported by Respondent occurred as outlined in Attachment A.

21. Respondent certifies that each facility for which it reported violations in Attachment A has been brought into compliance with all requirements under 40 C.F.R. Part 63, Subpart CCCCCC.

22. Respondent certifies that it has substantially complied with all conditions of the EPA's policy, *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (Audit Policy), 65 Fed. Reg. 19618 (April 11, 2000).

TERMS OF SETTLEMENT

23. To determine the appropriate civil penalty to resolve this matter, the EPA considered and applied the statutory factors described in section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(3)(1). The EPA also considered and applied adjustments to the civil penalty as set forth under the Audit Policy.

24. Respondent consents and agrees to pay a civil penalty in the amount of **thirteen thousand three hundred and nine dollars (\$13,309)**.

25. Payment is due within 30 calendar days from the date written on the Final Order issued by the Regional Judicial Officer that adopts this CCCA. If the due date falls on a weekend or legal federal

holiday, the due date is the next business day. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

26. The payment shall be made by any of the methods set forth in Attachment B to this CCCA.

27. At the time that payment is made, notice that payment has been made shall be provided to:

Adam Eisele
Environmental Scientist
Air & Toxics Technical Enforcement Program (8ENF-AT)
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129
eisele.adam@epa.gov

and

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129
artemis.tina@epa.gov

If payment is made by cashiers or certified check, the notice shall include a copy of the check. If payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.

28. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest accrues).

29. In addition, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31st day from the date of the Final Order, and each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the

date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

OTHER TERMS AND CONDITIONS

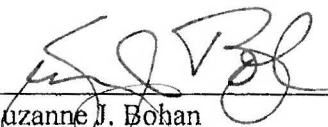
30. This CCCA contains all terms of the settlement agreed to by the Parties.
31. This CCCA, upon incorporation into a final order, applies to and is binding upon the EPA, Respondent, and Respondent's successors or assigns.
32. Nothing in the CCCA shall relieve Respondent of the duty to comply with the CAA and its implementing regulations.
33. Failure of Respondent to comply with any terms of this CCCA shall constitute a breach and may result in referral of the matter to the U.S. Department of Justice for enforcement of this agreement and such other relief as may be appropriate.
34. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.
35. Nothing in the CCCA shall be construed as a waiver by the United States of its authority to seek costs or any appropriate civil penalty associated with any action instituted in the appropriate U.S. District Court as a result of Respondent's failure to perform pursuant to the terms of this CCCA.
36. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into and legally bind Respondent to the terms and conditions of the CCCA.
37. The Parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.
38. Each Party shall bear its own costs and attorney fees in connection with this administrative matter.
39. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

40. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and Respondent's payment in full of the penalty described in paragraph 24 above, shall resolve Respondent's liability for civil penalties for the violations alleged in this CCCA.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Office of Enforcement, Compliance and
Environmental Justice
Complainant

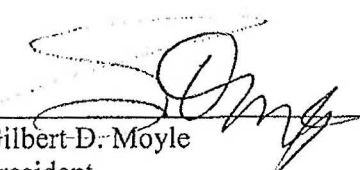
SEP 30 2014

Date: _____

By: 
Suzanne J. Bohan
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

MOYLE PETROLEUM COMPANY
Respondent

Date: 9/30/14

By: 
Gilbert D. Moyle
President

ATTACHMENT A

ATTACHMENT A

STORE NAME/ADDRESS	STORE OPENING DATE	DESCRIPTION OF POSSIBLE EPA VIOLATION	DATE POSSIBLE EPA VIOLATION WAS DISCOVERED	CORRECTIVE ACTION TAKEN
Common Cents 1909 LaCrosse Street Rapid City, SD 57701	June 1984	Late Installation and Test of Vapor Balance System.	March 1, 2013	Vapor Balance System Installed February 14, 2011 Tested November 29, 2011
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	May 3, 2013
Common Cents 2808 Sheridan Lake Road Rapid City, SD 57702	October 1981	Late Installation and Test of Vapor Balance System.	March 1, 2013	Vapor Balance System Installed February 15, 2011 Tested December 16, 2011
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	May 3, 2013
Common Cents 2660 Mt. Rushmore Road Rapid City, SD 57701	October 1996	Late Installation and Test of Vapor Balance System.	March 1, 2013	Vapor Balance System Installed February 17, 2011 Tested November 16, 2011
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	May 3, 2013
Common Cents 546 W. Jackson Spearfish, SD 57783	July 1986	Late Installation and Test of Vapor Balance System.	March 1, 2013	May 3, 2013
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	To be done June 23, 2013.
Common Cents 1907 South Douglas Hwy Gillette, WY 82716	October 1986	Late Installation and Test of Vapor Balance System.	March 1, 2013	Vapor Balance System Installed March 10, 2011 Tested May 9, 2012
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	May 3, 2013
Common Cents 2617 North Main Sheridan, WY 82801	October 1995	Late Installation and Test of Vapor Balance System.	March 1, 2013	Vapor Balance System Installed March 3, 2011 Tested October 4, 2012
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	May 3, 2013
Common Cents 632 North Poplar Street Casper, WY 82601	April 1999	Late Installation and Test of Vapor Balance System.	March 1, 2013	Vapor Balance System Installed March 1, 2011 Tested October 4, 2012 Found Issues, next test scheduled May 2013
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	May 3, 2013
Common Cents 60 SE Wyoming Blvd Casper, WY 82609	November 1988	Late Installation and Test of Vapor Balance System.	March 1, 2013	Vapor Balance System Installed March 16, 2011 Tested October 5, 2012
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	May 3, 2013
Common Cents 3601 W. Yellowstone Mills, WY 82644	1984	Late Installation and Test of Vapor Balance System.	March 1, 2013	Vapor Balance System Installed March 14, 2011 Tested April 4, 2013
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	May 3, 2013

ATTACHMENT A

STORE NAME/ADDRESS	STORE OPENING DATE	DESCRIPTION OF POSSIBLE EPA VIOLATION	DATE POSSIBLE EPA VIOLATION WAS DISCOVERED	CORRECTIVE ACTION TAKEN
Common Cents #252 412 N 500 W Huntsville, UT 84010	1999	Late 3-Year Test of Vapor Balance System.	May 27, 2013	November 26, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #253 3563 S Wall Avenue Ogden, UT 84401	2000	Late 3-Year Test of Vapor Balance System.	May 27, 2013	December 31, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #254 13561 S 200 W Draper, UT 84020	2004	Late 3-Year Test of Vapor Balance System.	May 27, 2013	September 9, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #255 1395 W 1600 N Orem, UT 84057	2000	Late 3-Year Test of Vapor Balance System.	May 27, 2013	November 25, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #256 726 N Rudwood Road Salt Lake City, UT 84116	2001	Late 3-Year Test of Vapor Balance System.	May 27, 2013	June 7, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #259 1888 W 5600 S Roy, UT 84067	2001	Late 3-Year Test of Vapor Balance System.	May 27, 2013	November 5, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #261 986 S Main Street Brigham City UT 84302	November 15, 2010	Late 3-Year Test of Vapor Balance System.	May 27, 2013	October 22, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #263 907 N Washington Blvd Harrisville UT 84404	November 15, 2010	Late 3-Year Test of Vapor Balance System.	May 27, 2013	October 22, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #264 856 N Main Layton UT 84041	November 15, 2010	Late 3-Year Test of Vapor Balance System.	May 27, 2013	October 22, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #265 1905 S Hwy 89-91 Logan UT 84321	November 15, 2010	Late 3-Year Test of Vapor Balance System.	May 27, 2013	November 5, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #266 1184 Wall Avenue Ogden UT 84041	November 15, 2010	Late 3-Year Test of Vapor Balance System.	May 27, 2013	October 22, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014

ATTACHMENT B

ATTACHMENT B

The following are acceptable payment methods for the civil penalty required to be paid pursuant to the Agreement.

1. If payment is being made by check (e.g., personal, business, cashier's, certified), submit the check, including the name and docket number of this case, payable to "Treasurer, United States of America" to:

Regular Mail:

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

Federal Express, Airborne, or other commercial carrier:

US Bank
Cincinnati Finance Center
Box 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Craig Steffen
513-487-2091, steffen.craig@epa.gov

2. Wire Transfers:

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

3. ACH (also known as REX or remittance express):

Automated Clearinghouse payments to EPA must indicate the name and docket number of this case and can be made through the US Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 – checking

Physical location of US Treasury Facility:

5700 Rivertech Court

Riverdale, MD 20737

US Treasury Contact Information:

John Schmid (202-874-7026)

Remittance Express (REX): 1-866-234-5681

4. On-line Payment:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below. Visa, Mastercard, American Express & Discover are accepted. You may also pay with banking information for direct debit from your account.

www.pay.gov

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 SEP 30 PM 4:49

EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:

Moyle Petroleum Company

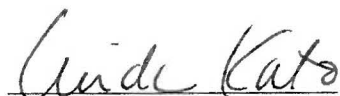
Respondent.

Docket No. CAA-08-2014-0016

Motion to File PDF Signature

Comes Now Complainant, the United States Environmental Protection Agency, Region 8 and Respondent, Moyle Petroleum Company, requesting that the Regional Judicial Officer (RJO) accept the filing of Respondent's PDF signature page. Complainant and Respondent have been in negotiations for some time and reached a final settlement agreement on September 30, 2014. Respondent agrees to send the original signature page to Complainant, and Complainant will replace the PDF signature page with the RJO's office upon receipt from Respondent. The Parties request that the RJO grant this Motion to File a PDF Signature.

Respectfully submitted this 30th day of September, 2014.



Linda S. Kato, Attorney
U.S.EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129