



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

September 28, 2021

VIA E-MAIL
DELIVERY RECEIPT REQUESTED

Kellee Cobb, Environmental, Health, and Safety Manager
Superior Oil: Reclaimed Energy Division
1500 Western Ave.
Connersville, Indiana 47331

Email: kcobb@relyonsuperior.com

Dear Ms. Cobb:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Superior Oil Reclaimed Energy Division, docket no. CAA-05-2021-0033. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 28, 2021.

Pursuant to paragraph 40 of the CAFO, Superior Oil must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Deborah Carlson, Associate Regional Counsel, 312-353-6121.

Sincerely,

NATHAN
FRANK

Digitally signed by
NATHAN FRANK
Date: 2021.09.22
12:15:15 -05'00'

Nathan Frank, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Coyle.ann@epa.gov

Regional Hearing Clerk/via electronic mail
R5hearingclerk@epa.gov

Deborah Carlson/via electronic mail
Carlson.Deborah@epa.gov

Phil Perry/via electronic mail
pperry@idem.in.gov

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2021-0033
)	
Superior Oil: Reclaimed Energy Division)	Proceeding to Assess a Civil Penalty
Connersville, Indiana)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Superior Oil: Reclaimed Energy Division, a corporation doing business in Indiana (Superior Oil).

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Under Section 112 of the CAA, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Off-Site Waste and Recovery Operations at 40 C.F.R. §§ 63.680 through 63.698 (NESHAP DD).

10. The provisions of NESHAP DD at 40 C.F.R. § 63.680(a)(1) and (a)(2)(i) apply to: the owner and operator of a plant site that is a major source of HAP emissions as defined in 40 C.F.R. § 63.2; that is a waste management operation that received off-site material; and that is an operation that is regulated as a hazardous waste treatment, storage and disposal facility (TSDF) under either 40 C.F.R. Parts 264 or 265.

11. NESHAP DD at 40 C.F.R. § 63.685(c)(2)(i) states that: “[t]he owner or operator must control air emissions from the tank in accordance with the provisions specified in subpart OO of this part—National Emission Standards for Tanks—Level 1 (Subpart OO), except that § 63.902(c)(2) and (3) shall not apply for the purposes of this subpart.”

12. Subpart OO at 40 C.F.R. § 63.902(b)(1) states that: “[t]he fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank. The fixed roof may be a separate cover installed on the tank (e.g., a removable cover mounted on an open-top tank) or may be an integral part of the tank structural design (e.g., a horizontal cylindrical tank equipped with a hatch).”

13. Subpart OO at 40 C.F.R. § 63.902(b)(4) states that “[t]he fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the regulated-material to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: organic vapor permeability, the effects of any contact with the liquid or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.”

14. NESHAP DD at 40 C.F.R. § 63.685(g)(1)(ii) states that “[e]ach opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.”

15. NESHAP DD at 40 C.F.R. § 63.685(g)(1)(iv) states that “[t]he closed-vent system and control device shall be designed and operated in accordance with the requirements of § 63.693 of this subpart.”

16. NESHAP DD at 40 C.F.R. § 63.693(c)(1)(i) states that “[t]he vent stream required to be controlled shall be conveyed to the control device by either a closed-vent system that is designed to operate with no detectable organic emissions using the procedure specified in

§ 63.694(k) of subpart DD or a closed-vent system that is designed to operate at a pressure below atmospheric pressure.”

17. NESHAP DD at 40 C.F.R. § 63.681 states that: “[n]o detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in § 63.694(k) of this subpart.”

18. NESHAP DD at 40 C.F.R. § 63.694(k)(9)(i) states that “[f]or a potential leak interface other than a seal around a shaft that passes through a cover opening, the potential leak interface is determined to operate with no detectable organic emissions if the organic concentration value determined in paragraph (k)(8) is less than 500 ppmv [parts per million by volume].”

19. NESHAP DD at 40 C.F.R. § 63.694(k)(1) provides the procedure for determining no detectable organic emissions for the purpose of complying with NESHAP DD: “[t]he test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (*i.e.*, a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked.”

20. NESHAP DD at 40 C.F.R. § 63.694(k)(5) requires that gases used to calibrate detection instruments used for EPA Method 21 monitoring be zero air (less than 10 ppmv hydrocarbon in air) and a mixture of methane or n-hexane in air at a concentration of approximately, but less than, 10,000 ppmv.

21. EPA Method 21 at 8.3.2 “Type II – ‘No Detectable Emission’” requires the following procedure: “[d]etermine the local ambient VOC concentration around the source by moving the probe randomly upwind and downwind at a distance of one to two meters from the source. If an interference exists with this determination due to a nearby emission or leak, the

local ambient concentration may be determined at distances closer to the source, but in no case shall the distance be less than 25 centimeters. Then move the probe inlet to the surface of the source and determine the concentration as outlined in section 8.3.1. The difference between these concentrations determines whether there are no detectable emissions.”

22. On December 7, 2018, the Indiana Department of Environmental Management issued Air Emission Permit No. 041-39385-00015 for Superior Oil (the Title V Permit).

23. Under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating the NESHAP regulations. The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

24. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$48,762 per day of violation up to a total of \$390,092 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

25. Section 113(d)(1) limits the Administrator’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

26. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

27. On September 10, 2019, EPA conducted a CAA inspection (the 2019 Inspection) at the Superior Oil facility at 1500 Western Avenue, Connersville, Indiana (the Facility).

28. Superior Oil routes the emissions from Tank 44 to a regenerative thermal oxidizer (RTO) and is required to meet standards for closed vent systems under NESHAP DD.

29. During the 2019 Inspection, EPA requested the last five years of Leak Detection and Repair (LDAR) information including calibration records.

30. Instrument calibration records demonstrate that Superior Oil used zero air and N-hexane at 100 ppm to calibrate instruments for purposes of LDAR monitoring from October 4, 2018 until April 2, 2020.

31. Following the 2019 Inspection, Superior Oil provided records indicating that zero air and N-hexane at 500 ppm were used to calibrate instruments for purposes of LDAR monitoring from at least May 22, 2017 until July 2, 2018.

32. LDAR monitoring records indicate that Superior Oil conducted Method 21 monitoring on closure devices servicing NESHAP DD storage tanks on a semi-annual frequency.

33. During the 2019 Inspection, EPA inspectors used toxic vapor analyzers (TVA) and a forward looking infrared (FLIR®) camera to observe the equipment at Superior Oil.

Equipment leaks observed during the 2019 Inspection are listed in Table 1.

Table 1: Summary of leaking equipment observed during the 2019 Inspection

Storage Tank Number	Measurement TVA #56575 (ppm)	Measurement TVA #56584 (ppm)	Notes
30	2,900	2,400	Vacuum side of conservation vent
32	3,600	5,500	Emergency vent
33	10,500	3,300	Vacuum side of conservation vent
34	577	814	Thief hatch
35	23,100	21,300	Emergency vent
36	30,000 (flame out)	88,000 (flame out)	Emergency vent
37	678	736	Emergency vent
44	623		Thief hatch; repair was made before the second measurement could be taken

34. Superior Oil LDAR records indicate that 3 leaks were discovered on closure devices while performing Method 21 monitoring at the Facility from January 1, 2015 until September 9, 2019; closure device leaks discovered by Superior Oil are listed in Table 2.

Table 2: Summary of leaking closure devices observed by Superior Oil 1/1/2015 – 9/9/2019

Storage Tank Number	Date of Leak Discovery	Component Type
37	10/6/2017	Emergency Hatch
33	4/4/2018	Emergency Vent
34	4/4/2018	Thief Hatch

35. As demonstrated by measurements taken using Method 21 during the 2019 Inspection, the closure devices listed in Table 1 did not minimize exposure of the regulated-material to the atmosphere, to the extent practical, and maintain the integrity of the equipment throughout its intended service life, in violation of 40 C.F.R. § 63.902(b)(4) and the Title V Permit at Section E.3.2.

36. Superior Oil failed to design the thief hatch on tank 44 to operate with no detectable emissions, in violation of Subpart DD at 40 C.F.R. §§ 63.685(g)(1)(ii) and 63.693(c)(1)(i), and the Title V Permit at Section E.2.2, as determined by measurements made while conducting Method 21 monitoring during the 2019 inspection.

37. As described in Paragraph 30 and 31 above, Superior Oil failed to utilize the correct mixture concentration of the gas, in violation of 40 C.F.R. 63.694(k)(5) and the Title V Permit at Section E.2.2.

38. Superior Oil failed to perform Method 21 correctly on closure devices from April 1, 2016 until September 9, 2019, in violation of 40 C.F.R. § 63.694(k)(1), 40 C.F.R. Part 60, Appendix A Test Method 21 §§ 8.3.1 and 8.3.2 and the Title V Permit at Section E.2.2.

Civil Penalty

39. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and cooperation from the Respondent, Complainant has determined that an appropriate civil penalty to settle this action is \$149,986.

40. Within 30 days after the effective date of this CAFO, Respondent must pay a \$149,986 civil penalty by ACH electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

41. Respondent must send a notice of payment that states Respondent’s name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Deborah Carlson
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
carlson.deborahA@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

42. This civil penalty is not deductible for federal tax purposes.

43. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

44. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

45. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: carlson.deborahA@epa.gov (for Complainant), and kcobb@relyonsuperior.com (for Respondent).

46. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

47. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

48. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 46, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

49. Respondent certifies that it is complying fully with NESHAP DD.

50. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

51. The terms of this CAFO bind Respondent, its successors and assigns.

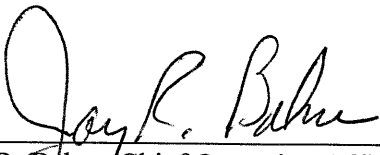
52. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

53. Each party agrees to bear its own costs and attorney's fees in this action.

54. This CAFO constitutes the entire agreement between the parties.

Superior Oil: Reclaimed Energy Division, Respondent

9/22/2021
Date



Jay R. Baker, Chief Operating Officer
Superior Oil: Reclaimed Energy Division

United States Environmental Protection Agency, Complainant

Harris,
Michael

Digitally signed by Harris,
Michael
Date: 2021.09.23
14:42:34 -05'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Superior Oil: Reclaimed Energy Division
Docket No. CAA-05-2021-0033

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

ANN COYLE Digitally signed by ANN
COYLE
Date: 2021.09.27
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Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Superior Oil: Reclaimed Energy Division
Docket Number: [CAA-05-2021-0033](#)

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number [CAA-05-2021-0033](#), which was filed on [September 28, 2021](#), in the following manner to the following addressees:

Copy by E-mail to Respondent: Kellee Cobb
kcobb@relyonsuperior.com

Copy by E-mail to
Attorney for Complainant: Deborah Carlson
Deborah.Carlson@epa.gov

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: _____
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5