

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
BEFORE THE ADMINISTRATOR

FILED
2017 MAY 16 AM 9:17
REGIONAL HEARING CLERK
EPA REGION VI

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|--------------------------------|---|------------------|
| In the Matter of: | § | |
| | § | |
| Blanchard Refining Company LLC | § | EPA Docket No. |
| Texas City, Texas | § | CAA-06-2017-3354 |
| | § | |
| Respondent | § | |

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency Region 6 (Complainant) and Blanchard Refining Company LLC (“Blanchard” or “Respondent”) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to sections 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, as amended (CAA), 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. For purposes of this proceeding, Respondent admits the jurisdictional allegations contained herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth herein, and waives all defenses, which have

been raised or could have been raised to the claims set forth in this CAFO.

4. Respondent does not waive any rights or defenses which have been raised or could be raised in any state law proceeding.

5. Compliance with all the terms and conditions of this CAFO shall resolve Respondent's liability only for those claims which are set forth herein.

6. Respondent consents to the issuance of this CAFO and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

II. ALLEGATIONS

7. Respondent is a company doing business in Texas.

8. Respondent owns and operates a refinery located at 2401 5th Avenue So., Texas City, Texas (Facility).

9. Along with a number of other processes, Blanchard operates a catalytic feed hydrotreater unit (CFHU) at the Facility.

10. The CFHU uses a catalytic process to remove sulfur and nitrogen from gas oil, converting those compounds into hydrogen sulfide and ammonia, respectively. The unit uses two preheater furnaces to heat the stream.

11. On September 15, 2015, a tube metal temperature indicator on one of the preheater furnaces, 101B, began to intermittently exceed its normal operating limit (NOL) of 1075°F.

12. Tube metal temperature indicators are well-known within industry to experience reliability issues that result in failure of the instrument or erroneous temperature readings.

13. Three months earlier, a number of tube metal temperature indicator alarms

within the CFHU were rendered inactive due to reliability issues to prevent nuisance alarming. As a result, there was uncertainty as to whether this tube metal temperature reading was accurate or faulty.

14. Due to the uncertainty surrounding this tube metal temperature reading, operating limits on the furnace bridgewall temperature NOL, safe operating limit (SOL), and safe design limit (SDL) were reduced to more conservative levels and the bridgewall temperature was used to monitor furnace operations.

15. In the following months the 101B tube metal temperature began intermittently exceeding its NOL of 1075°F.

16. On May 3, 2016, the tube metal temperature went into an NOL alarm and was acknowledged by the board operator.

17. On May 6, 2016, the tube metal temperature exceeded the SDL and stayed above that threshold for 12 days until the furnace tube failure, even though the bridgewall temperature that was used to monitor furnace operations remained within operating range.

18. On May 18, 2016, a field operator observed a fire inside the 101B Preheater deriving from a 4" crack in the heater tube.

19. The unit was evacuated and safely shut down, and the CFHU was depressured to the fuel gas system and a flare. There were no injuries and only minor damage to the furnace.

20. As a result of the fire and subsequent depressurization during shut down, the Facility released a number of regulated substances into the air, including:

- a. 5,858 pounds of Sulfur Dioxide;
- b. 2,378 pounds of Pentane Plus;

- c. 95 pounds of NOX;
- d. 64 pounds of N-butane;
- e. 62 pounds of Hydrogen Sulfide; and,
- f. 55 pounds of Propane

21. Blanchard's subsequent investigation revealed several additional contributing factors leading to the failure:

- a. Flame impingement in the area of the fire box failure leading to the elevated tube metal temperatures was not recognized.
- b. A maintenance order to address the problem was never requested to correct the flame impingement.
- c. There was no awareness that the tube metal temperature was exceeding the SOL and SDL.
- d. The corrective action response to NOL, SOL, and SDL exceedances did not conform to the operating limits table established by Blanchard.

22. 40 C.F.R. § 68.130 lists toxic and flammable substances regulated under CAA § 112(r) and establishes a threshold quantity of the regulated substances for participation in the Risk Management Program (RMP).

23. The Facility handles a number of listed chemicals in a process in excess of the threshold quantities listed in 40 C.F.R. § 68.130.

24. The Facility is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3; the CFHU is a "covered process" as that term is defined by 40 C.F.R. § 68.3.

25. This covered process is subject to the Program 3 requirements of the RMP regulations and must, among other things, comply with the requirements of 40 C.F.R.

Part 68, Subpart D.

VIOLATIONS

Implementation of Operating Procedures 40 CFR § 68.69

26. 40 C.F.R. § 68.69 requires facilities to develop and implement operating procedures that provide clear instructions for safely conducting activities involved in each covered process.

27. Though Respondent developed operating procedures related to operating limits, those operating limits were not properly followed.

28. Therefore, Respondent violated 40 CFR 68.69.

Mechanical Integrity 40 CFR § 68.73

29. 40 C.F.R. § 68.73(e) requires the owner or operator to correct certain deficiencies in equipment.

30. 101B Preheater experienced high tube metal temperatures but no steps were taken to correct the problem.

31. Therefore, Respondent violated 40 C.F.R. § 68.73(e).

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

32. Pursuant to the authority granted in sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and taking into consideration the size of the corporation, the economic impact of the penalty on the Respondent's business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, the economic benefit of noncompliance, the seriousness of the violation, Respondent's cooperation, as well as other factors which

justice may require, EPA and Respondent agree that an appropriate penalty to settle this matter is \$80,000.

33. Respondent shall pay the assessed penalty within thirty (30) days of the effective date of this CAFO. Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA – Region 6." Payment shall be remitted in one of four ways: regular U.S. Postal Service mail (including certified mail); overnight mail; wire transfer; or U.S. Postal Service express mail - the check should be remitted to:

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

For overnight mail (non-U.S. Postal Service; e.g., FedEx), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 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"

PLEASE NOTE: Docket number CAA-06-2017-3354 shall be clearly typed on the

check to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. If payment is made by wire service, the wire transfer instructions shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter or wire transfer instructions to the following:

Justin McDowell
Enforcement Officer (6EN-AS)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to these instructions will ensure that proper credit is given when penalties are received in the Region.

34. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

35. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the due date.

Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

36. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

37. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their successors, and assignees.

38. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. RETENTION OF ENFORCEMENT RIGHTS

39. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

40. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and

40 C.F.R. Part 68.

41. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Facility. Furthermore, except as specifically set forth herein, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

42. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to the claims that have been specifically resolved pursuant to this CAFO.

D. COSTS

43. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

E. TERMINATION

44. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed.

F. EFFECTIVE DATE

45. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS
CONSENT AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:

5-8-17
Date

Ry Brooks



FOR THE COMPLAINANT:

5-10-17
Date

Ce
Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case 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 shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: May 15, 2017



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of May, 2017, the original and a copy of the foregoing Consent Agreement and Final Order (CAFO) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: #70151520003 39895022

Randy Bordes
Attorney
Marathon Petroleum Company LP
2401 5th Avenue South
Texas City, Texas 77590

Date: 05-16-2017



U.S. EPA, Region 6
Dallas, Texas