

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF:

SMO, Inc.
d/b/a Nicholes Fleet Street Shell
601S.Luzerne Ave.
Baltimore, Maryland 21224

DOCKET NO. CAA-03-2008-0350

Proceeding Under the Clean Air Act,
Section 113(a) and (d)

Respondent.

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

This administrative Consent Agreement (the "Consent Agreement") is entered into by and between the Complainant, the Director of the Air Protection Division, United States Environmental Protection Agency, Region III ("EPA" or "Complainant"), and SMO, Inc. d/b/a Nichols Fleet Street Shell (the "Respondent"), pursuant to Sections 113(a)(3) and (d) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413(a)(3) and (d), 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, (the "Consolidated Rules of Practice"). The Consolidated Rules of Practice at 40 C.F.R. § 22.13 provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be commenced and concluded simultaneously by the issuance of a consent agreement and final

order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This Consent Agreement and the accompanying Final Order (collectively referred to as the “CAFO”) address alleged violations by Respondent at the gas station it owns and operates at 601 S. Luzerne Avenue, Baltimore, Maryland 21224 (the “Facility”). The alleged violations pertain to the Code of Maryland Regulations (“COMAR”), Title 26, Subtitle 11, Chapters 13 and 24 (COMAR 26.11.13 *et. seq.* and COMAR 26.11.24 *et. seq.*), which contain the requirements for gas stations subject to the Control of Gasoline and Volatile Organic Compound Storage and Handling (“Stage I Program”) and the Stage II Vapor Recovery of Gasoline Dispensing Facilities Program. COMAR 26.11.13 *et. seq.* (“Stage I Program”) and COMAR 26.11.24 *et. seq.* (“Stage II Program”) are a federally enforceable part of the Maryland State Implementation Plan (“SIP”).

II. GENERAL PROVISIONS

1. Respondent admits to the jurisdictional allegations set forth in this Consent Agreement.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and the conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest EPA’s jurisdiction with respect to the execution of this CAFO, the issuance of the accompanying Final Order, or the enforcement of the CAFO.
4. Respondent consents to the issuance of the accompanying Final Order, and to the terms and conditions set forth therein, and consents to the payment of a civil penalty as set forth in this CAFO.
5. Respondent agrees to pay its own costs and attorney fees.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), EPA alleges the following findings of fact and conclusions of law.
7. Respondent is a corporation organized under the laws of the State of Maryland, with a principal place of business located at 6355 Crain Highway, La Plata, Maryland 20646. Respondent is a/k/a Southern Maryland Oil, Inc.
8. Respondent is a "person," as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).
9. Respondent is an owner/operator of a **"gasoline dispensing facility"**, known as Nicholes Fleet Street Shell, which is located at 601 S. Luzerne Avenue, Baltimore, Maryland 21224 (the "Facility").
10. Respondent owns and/or operates at the Facility stationary gasoline storage tanks with a capacity of at least two thousand (2,000) gallons and therefore is subject to the requirements of the federal standards for small gasoline storage tanks or the appropriate State or local program (see Section 324(a) of the CAA, 42 U.S.C. § 7625(a), and COMAR 26.11.13.04 (C)).
11. The Facility also constitutes a gasoline dispensing facility with the requisite monthly throughput thresholds, and therefore is subject to the requirements of the federal Stage II Vapor Recovery Program or the appropriate approved State or local program (see Section 324(a) of the CAA, 42 U.S.C. § 7625(a), and COMAR 26.11.24.02. The Facility is

equipped with a Stage II vacuum assist vapor recovery system.

12. COMAR 26.11.13 *et. seq.* and COMAR 26.11.24 *et. seq.* are federally enforceable as both Sections have been incorporated into the Maryland SIP by EPA's approval of the regulations as revisions to the SIP. 42 U.S.C. § 7413(d)(1); 40 C.F.R. §§ 52.23, 52.1070.
13. On February 12, 2008, EPA and the Maryland Department of the Environment conducted a full compliance evaluation at the Facility.

COUNT I

14. The allegations contained in Paragraphs 1 through 13 are incorporated herein by reference.
15. Pursuant to COMAR 26.11.24.07(A) and (B), and in relevant part only, Respondent shall create and maintain a record file *at the Facility* which contains copies of all test reports, permits, violation notices, correspondence with the Department, equipment maintenance records, training records, and other information pertinent to the requirements of this chapter 24 ["Stage II" program]. Verification of training shall be maintained in the facility file. Equipment maintenance records required under this chapter shall be maintained for at least 2 years and all other records shall be maintained for at least 5 years.
16. During the February 12, 2008 inspection of the Facility, the Facility failed to provide the EPA representative with a complete record file. Among other things, Respondent failed to create and maintain the requisite permit(s), listed in paragraph 15, above.

17. Respondent's failure to create and maintain the above enumerated records on site for the requisite time period violated COMAR 26.11.24.07(A) and (B) , which constitutes a violation of Section 113(d)(1)(A) of the CAA, 42 U.S.C. § 7413(d)(1)(A).

COUNT II

18. The allegations contained in Paragraphs 1 through 17, above, are incorporated herein by reference.
19. Pursuant to COMAR 26.11.13.04.D(2), and in relevant part only, a person may not cause or permit gasoline to be loaded into any tank truck, railroad tank car, or other contrivance unless the equipment is maintained and operated in a manner to prevent avoidable liquid leaks during the loading and unloading operations.
20. During the February 12, 2008 inspection of the Facility, an EPA representative observed and verified that the sumps had fuel present and that the tank vents were not protected.
21. Respondent's failure to clean out all sumps at the Facility and assure that the tank vents are protected, which is part and parcel of a plan to operate and maintain the equipment in order to prevent avoidable liquid leaks during the loading and unloading operations, is a violation of COMAR 26.11.13.04.D(2), which constitutes a violation of Section 113(d)(1)(A) of the CAA, 42 U.S.C. § 7413(d)(1)(A).

IV. SETTLEMENT RECITATION

Compliance

22. Respondent herein certifies to Complainant EPA that upon investigation, to the best of its knowledge and belief, all violations alleged in the Consent Agreement will be remedied within thirty (30) days of Respondent's initial receipt of this Consent Agreement.

Civil Penalty

23. In settlement of the alleged violations enumerated above, Respondent agrees to pay a civil penalty amount of One Thousand Dollars (\$1,000.00). The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty assessment criteria set forth in Section 113(e), of the CAA, 42 U.S.C. § 7413(e), the seriousness of Respondent's violations and Respondent's good faith efforts to comply, as provided in the Clean Air Act Stationary Source Civil Penalty Policy. Such payment shall be made by Respondent no later than thirty (30) days after the effective date of the accompanying Final Order, but in no case prior to the effective date of the Final Order.
24. Payment of the civil penalty amount required under the terms of paragraph 23, above, shall be made by either cashier's check, certified check or electronic wire transfer. All checks shall be made payable to "United States Treasury" and shall be sent either by regular U.S. Postal Service mail to the attention of U.S. EPA, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO 63197-9000, or by overnight delivery to U.S. EPA, Fines and Penalties, U.S. Bank, 1005 Convention Plaza, Mail

Station SL-MO-C2GL, St. Louis, MO 63101. All payments made by check also shall reference Respondent's name and address and the above case caption and docket number (CAA-03- 2008-0350). All electronic wire transfer payments shall be directed to 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 wire transfer message should read: "D 68010727 Environmental Protection Agency"). At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Chief, Enforcement Branch (3AP12), Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

25. The Respondent agrees not to deduct for federal tax purposes the civil penalty specified in this Consent Agreement and the accompanying Final Order.

Reservation of Rights

26. This Consent Agreement and the attached Final Order only resolve those claims which are alleged in this Consent Agreement. Nothing herein shall be construed to limit the authority of the EPA to undertake action against any person, including Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nor

shall anything in this Consent Agreement and the attached Final Order be construed to limit the United States' authority to pursue criminal sanctions.

27. EPA reserves any rights and remedies available to it to enforce the provisions of this Consent Agreement, the CAA and its implementing provisions, and of any other federal laws or regulations for which it has jurisdiction, following the entry of this Consent Agreement.

Waiver of Hearing

28. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), with respect to any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the accompanying Final Order.


Effective Date

29. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order is filed with the Regional Hearing Clerk, U.S. EPA, Region III.

The undersigned representative of the Respondent certifies that he/she is fully authorized to execute this Consent Agreement and to legally bind the party he/she represents.

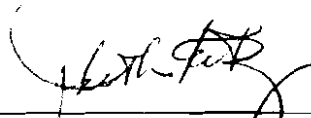
For the Respondent:

Date 7/31/08


M. L. STRUISE
President & C.E.O.

For the Complainant:

8/12/08
Date


Judith M. Katz, Director
Air Protection Division
U.S. Environmental Protection Agency, Region III

Accordingly, the Air Protection Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of EPA Region III or his designee, the Regional Judicial Officer, ratify this Consent Agreement and issue the accompanying Final Order. The amount of the recommended civil penalty assessment is One Thousand Dollars (\$1,000.00).

