



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

2014 SEP 23 PM 1: 23

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2014-0012

IN THE MATTER OF:)

Suncor Energy (U.S.A) Inc.)
Suncor Energy Commerce City Refinery)
5801 Brighton Boulevard)
Commerce City, Colorado)

FINAL ORDER

Respondent)
)
)
)

Pursuant to 40 C.F.R. §22.13(b) and 22.18, of the EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 23rd Day of September, 2014.

Elyana R. Sutin
Regional Judicial Officer

IN THE MATTER OF: Suncor Energy (U.S.A) Inc.
DOCKET NO.: CAA-08-2014-0012

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT/CONSENT AGREEMENT** in the matter of **Suncor Energy (U.S.A) Inc.**; **DOCKET NO.: CAA-08-2014-0012**, was filed with the Regional Hearing Clerk on September 22, 2014; **THE FINAL ORDER** was filed on September 23, 2014


Further, the undersigned certifies that a true and correct copy of the document was delivered to Marc Weiner, Enforcement Attorney, U.S. Environmental Protection Agency – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail, domestic return receipt on September 23, 2014

to:

Jacy Rock, Esq.
Suncor Energy (U.S.A) Inc.
717 17th Street, Suite 2900
Denver, CO 80202
Certified Mail No.: 7008 3230 0003 0726 0344

And emailed to:

Kim White
U.S. Environmental Protection Agency
Cincinnati Finance Center
26 West Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268


for Tina Artemis
Paralegal/Regional Hearing Clerk

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 SEP 22 PM 3: 52

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:

DOCKET NO. : ~~CAA-08-2014-0012~~

Suncor Energy (U.S.A.) Inc.
Suncor Energy Commerce City Refinery
5801 Brighton Boulevard
Commerce City, Colorado 80022-3696

COMBINED COMPLAINT AND
CONSENT AGREEMENT

Respondent

Complainant, United States Environmental Protection Agency, Region 8 (the EPA or Complainant), and Respondent, Suncor Energy (U.S.A.) Inc. (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 the implementing regulations associated with the "Prevention of Accidental Releases" requirements of section 112(r) of the CAA, 42 U.S.C. § 7412(r). 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. Pursuant to Section 113(d)(1)(C) of the CAA, 42 U.S.C. § 7413(d)(1)(C), the Department of Justice and the EPA have jointly determined that this matter is appropriate for handling as an administrative penalty action.
2. The undersigned EPA official has been properly delegated the authority to issue this action.
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. Solely for the purposes of this CCCA, Respondent consents to the EPA's jurisdiction, and waives all objections and defenses it may have to the EPA's jurisdiction.

7. Respondent does not admit to liability with respect to any of the allegations contained in this CCCA.

8. 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 against the EPA with respect to the 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.

9. The Department of Justice has granted a blanket waiver under CAA section 113(d), 42 U.S.C. § 7413(d), for violations that have occurred more than one year before the initiation of an administrative action by the EPA.

STATUTORY AND REGULATORY FRAMEWORK

10. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), authorizes the Administrator to promulgate regulations regarding the prevention and detection of accidental releases of designated chemicals. Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B), requires the Administrator to promulgate regulations requiring the owners or operators of stationary sources where a regulated substance is present above a threshold quantity to prepare a risk management plan (RMP) to prevent or minimize risks of accidental releases of those designated substances. The regulations, promulgated by EPA pursuant to CAA § 112(r)(7), are set forth in 40 C.F.R. part 68.

11. Under 40 C.F.R. § 68.3, the following definitions apply:
 - a. “Stationary source” means “any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur.”
 - b. “Regulated substance” means “any substance (listed pursuant to section 112(r)(3) of the Clean Air Act) in 40 C.F.R. § 68.130.” Threshold quantities for the regulated substances are included in 40 C.F.R. § 68.130.
12. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines the term “person” to include in relevant part, an individual, corporation, or partnership.
13. Respondent is a person, and thus subject to regulation under section 112(r) of the CAA, 42 U.S.C. § 7412(r)(7).
14. Respondent is the owner and/or operator of the Suncor Energy Commerce City Refinery, a stationary source, located at 5801 Brighton Boulevard, Commerce City, Colorado (Facility).
15. The Facility uses, handles, and/or stores more than a threshold quantity of flammable mixtures and hydrogen sulfide, regulated substances.
16. Pursuant to section 112(r)(7) of the CAA, 42 U.S.C. §7412(r)(7), the Respondent is required to prepare and implement a risk management program (RMP) to detect and prevent or minimize accidental releases of such regulated substances.

SPECIFIC ALLEGATIONS

17. On December 10-14, 2012, authorized representatives of the EPA conducted an inspection (EPA inspection) of the Facility, with the consent of the Respondent, to determine compliance with CAA

§ 112(r)(7). During the inspection, the EPA representatives observed alleged violations of the CAA section 112(r)(7). The alleged violations are described in paragraphs 18-21.

18. 40 C.F.R. § 68.65 provides that the owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by this rule. Instrumented safety systems (“ISS”) and critical alarm system (“CAS”) information for Plant 2 (or the “East Plant”) of Respondent’s Commerce City Refinery, located at 5800 Brighton Boulevard, Commerce City, Adams County, Colorado, was not included in the process safety information. This is an alleged violation of 40 C.F.R. § 68.65.

19. 40 C.F.R. § 68.73(b) provides that the owner or operator shall establish and implement written procedures to maintain the ongoing integrity of process equipment. Written procedures for valves RV-15 and RV-874 were not implemented. This is an alleged violation of 40 C.F.R. § 68.73(b).

20. 40 C.F.R. § 68.75 provides that the owner or operator shall establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures; and, to changes to stationary sources that affect a covered process. Management of change procedures were not implemented for the KMS software implementation and Respondent’s relocation of the fire support service station. This is an alleged violation of 40 C.F.R. § 68.75.

21. 40 C.F.R. § 68.79(d) provides that the owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected. Several findings from the Facility’s 2007 compliance audit did not have documentation that indicated deficiencies had been corrected (although Suncor alleges that such deficiencies were promptly corrected). This is an alleged violation of 40 C.F.R. § 68.79(d).

PENALTY

22. Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. part 19 authorize the assessment of a civil penalty of up to \$37,500 per day of violation for each violation of the

implementing regulations associated with the requirements of 42 U.S.C. § 7412(r). To determine the amount of the civil penalty to be assessed pursuant to section 113(e)(1) of the Act, 42 U.S.C.

§ 7413(e)(1), EPA took into account, in addition to such other factors as justice may require, the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations.

23. Respondent consents and agrees to pay a civil penalty in the amount of sixty eight thousand and two hundred dollars (\$68,200) (the "Penalty").
24. Attachment A (Collection Information) to this CCCA, provides terms for payment of the Penalty including the assessment of fees and interest charges for late payments.

COMPLIANCE

25. Respondent agrees, by signing this CCCA, that all alleged violations have been corrected.
26. Once the Respondent receives a copy of the Final Order and pays in full the Penalty, the EPA agrees not to take any further civil or administrative enforcement action (including any civil or administrative penalty action) against the Respondent for the violations alleged in this CCCA.

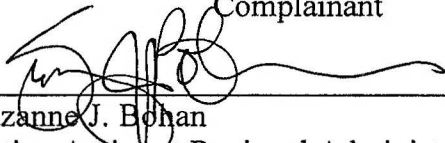
OTHER TERMS

27. This CCCA contains all terms of the settlement agreed to by the parties.
28. This CCCA, upon incorporation into a final order, applies to and is binding upon EPA, Respondent, and Respondent's successors or assigns.
29. Nothing in the CCCA shall relieve Respondent of the duty to comply with the CAA and its implementing regulations.
30. 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.
31. 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.
32. Nothing in the CCCA shall be construed as a waiver by the United States of its authority to seek costs or any appropriate penalty associated with any action instituted as a result of Respondent's failure to perform pursuant to the terms of this CCCA.
33. 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.
34. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.
35. Each party shall bear its own costs and attorney fees in connection with this administrative matter.
36. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

37. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil and administrative settlement of the violations alleged in this CCCA.


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

Date: SEP 22 2014

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

Suncor Energy (U.S.A.) Inc.

Date: SEP 9 2014

Respondent
By: 
SHELLEY POWELL VP REFINING COMMERCE 01

COLLECTION INFORMATION

Payment shall be due on or before 30 calendar days after the date of the Final Order issued by the Regional Judicial Officer who adopts this agreement. If the due date falls on a weekend or legal Federal holiday, then the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

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. (That is, on the 1st late day, 30 days of interest accrues.)

In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the Final Order, and each subsequent thirty-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 (that is, the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

CHECK PAYMENTS:

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

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

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"

OVERNIGHT MAIL:

US Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

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:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required fields.