



September 3, 2021

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 8:37 AM
REGION 8**

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Phone 800-227-8917
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Received by
EPA Region VIII
Hearing Clerk

DOCKET NO.: CAA-08-2021-0007

IN THE MATTER OF:)	
)	
SILVER EAGLE REFINING, INC.)	FINAL ORDER
)	
)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of 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 filing this Consent Agreement and Final Order.

SO ORDERED THIS 3rd **DAY OF** September, **2021.**

**KATHERIN
HALL**

Digitally signed by
KATHERIN HALL
Date: 2021.09.03 08:35:57
-06'00'

Katherin E. Hall
Regional Judicial Officer

September 3, 2021

8:37 AM

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Received by
EPA Region VIII
Hearing Clerk

IN THE MATTER OF:)
)
Silver Eagle Refining, Inc.)
2355 South 1100 West)
Woods Cross, Utah 84087)
)
Respondent.)
_____)

CONSENT AGREEMENT

Docket No.: CAA-08-2021-0007

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 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 of Practice), as codified at 40 C.F.R. part 22.
2. Silver Eagle Refining, Inc. (Respondent) owns and/or operates the Silver Eagle Woods Cross Refinery located in Woods Cross, Utah.
3. The EPA and Respondent, having agreed settlement of this action is in the public interest, consent to the entry of this Consent Agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

4. This Agreement is issued under the authority vested in the Administrator of the EPA by section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d). The undersigned EPA official has been duly authorized to institute this action.
5. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for administrative penalty assessment. 42 U.S.C. § 7413(d), 40 C.F.R § 19.4.
6. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
7. The Final Order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

8. Sections 112(r)(1) and (3) of the CAA, 42 U.S.C. § 7412(r)(1) and (3), provide that the objective of the regulations and programs authorized under section 112(r) shall be to prevent the accidental release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance, pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and to minimize the consequences of any such release that does occur.
9. On November 15, 1990, Congress amended the CAA and added section 112(r)(1), commonly known as the General Duty Clause. Pursuant to section 112(r)(1), the owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty, in the same manner and to the same extent as section 654, Title 29 of the United States Code, to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.
10. Pursuant to sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA, including, but not limited to, the General Duty Clause, or a requirement or prohibition of any rule promulgated under the CAA, but other than those requirements specified in sections 113(a)(1), 113(a)(2) or 113(d)(1)(A) of the CAA (42 U.S.C. §§ 7413(a)(1), 7413(a)(2), or 7413(d)(1)(A)), the Administrator may issue an order assessing a civil administrative penalty.
11. Pursuant to section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and as adjusted by the transmittal of the Civil Monetary Penalty Inflation Adjustment, 85 Federal Register (FR) 83818 - 83821 (December 23, 2020), and 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$48,762 per violation per day of violation occurring after November 2, 2015, where penalties are assessed on or after December 23, 2020.
12. The term “extremely hazardous substance” means an extremely hazardous substance within the meaning of section 112(r)(1) of the CAA, including any chemical which may, as a result of short-term exposures associated with releases to the air, cause death, injury, or property damage due to its toxicity, reactivity, flammability or corrosivity.¹ The term includes, but is not limited to, regulated substances listed in CAA section 112(r)(3) and in 40 C.F.R. § 68.130. In addition, the release of any substance that causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or that causes substantial property damage by blast, fire, corrosion or other reaction would create a presumption that such substance is extremely hazardous.² Under Section 112(r)(3) of the CAA, the term “extremely hazardous substances” also includes, without limitation and in addition to substances listed in 40 C.F.R. § 68.130, those substances listed in 40 C.F.R. Part 355, Appendices A and B, published under section 302 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11002.

¹ Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Sen. Report No. 228, 101st Congress, 1st Session 211 (1989).

² Id.

13. The term “owner or operator” shall mean any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7412(a)(9).
14. The term “person” is defined in section 302(e) of the CAA, 42 U.S.C. § 7602(e), as including an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.
15. The term “regulated substance” is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to section 112(r)(3) of the CAA as amended, in § 68.130.
16. The term “stationary source” is defined by section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), in pertinent part, as any buildings, structures, equipment, installations, or substance-emitting stationary activities, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur.

IV. STIPULATED FACTS

17. Respondent is a corporation authorized to do business in the state of Utah and is therefore a “person” and subject to regulation under the CAA.
18. Respondent is the owner and/or operator of the Silver Eagle Woods Cross Refinery, a stationary source, located at 2355 South 110 West, Woods Cross, Utah (the Facility).
19. The Facility’s North American Industry Classification System (NAICS) code is 32411, Petroleum Refineries.
20. The Facility refines low sulfur yellow crude into ultra-low sulfur diesel fuel, naptha, heavy gas oil and vacuum tower bottoms and those processes contain flammable mixtures of regulated substances listed in Table 3 of 40 C.F.R. § 68.130.
21. By performing the activities in paragraph 20, above, Respondent produces, processes, handles, or stores extremely hazardous substances and is therefore subject to section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).
22. From September 18-19, 2018, authorized representatives of the EPA conducted an inspection of the Facility to assess compliance with section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).
23. During that inspection, the EPA representatives observed alleged violations of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). The alleged violations are described in section V of this Agreement, below.

V. ALLEGED VIOLATIONS OF LAW

24. Section 112(r)(1) of the CAA provides that the owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty to identify hazards

which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

25. Respondent did not identify High Temperature Hydrogen Attack as a potential hazard in their process hazard analysis for the carbon steel heat exchangers operating at high temperatures and hydrogen partial pressures. By not identifying this potential hazard in their process hazard analysis, Respondent violated section 112(r)(1) of the CAA.
26. Respondent did not maintain updated Piping and Instrumentation Diagrams that reflected actual field conditions for the Fuel Gas Drum and associated piping. By not maintaining updated Piping and Instrumentation Diagrams to reflect actual field conditions, Respondent failed to design and maintain a safe facility taking such steps as are necessary to prevent releases and violated section 112(r)(1) of the CAA.

VI. TERMS OF CONSENT AGREEMENT

27. For the purpose of this proceeding, Respondent:
 - a. admits the jurisdictional allegations in section II of this Agreement;
 - b. neither admits nor denies the alleged violations of law stated in Section V of this Agreement;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. consents to the conditions specified in this Agreement;
 - e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - f. waives any right to contest any final order approving this Agreement; and
 - g. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.
28. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. part 19 authorize the EPA to assess an administrative civil penalty per day of violation for each violation of the implementing regulations associated with section 112(r) of the CAA, 42 U.S.C. § 7412(r).
29. Pursuant to section 113(e) of the CAA, 42 U.S.C. § 7413(e), the EPA is required to consider, in addition to such other factors as justice may require, to the extent known, the size of Respondent's business, the economic impact of the penalty on the business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, payment by the Respondent of penalties previously assessed for the same violation, the

economic benefit of non-compliance, and the seriousness of the violations.

30. Based on the Alleged Violations of Law, and after consideration of the statutory factors in paragraph 29 above, the EPA has determined a civil penalty of \$93,452 is appropriate to settle this matter.

31. Penalty Payment. Respondent agrees to:

- a. pay a civil penalty in the amount of \$93,452 within 30 calendar days of the Effective Date of this Agreement;
- b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment> and <https://www.epa.gov/financial/additional-instructions-making-payments-epa> ;
- c. identify the payment with the docket number that appears on the final order; and
- d. within 24 hours of payment, email proof of payment to Steven Ramirez and Marc Weiner at Ramirez.StevenA@epa.gov and Weiner.Marc@epa.gov (proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to the EPA requirements, in the amount due, and identified with the docket number that appears on the Final Order).

32. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States’ enforcement expenses; “and a 10% quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);”
- b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
- d. suspend or revoke Respondents’ licenses or other privileges or suspend or disqualify Respondents from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

33. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

34. Respondent agrees, by signing this Agreement, that all alleged violations have been corrected.
35. Respondent agrees and certifies, by signing the Agreement, that the Facility is in full compliance with section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).
36. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in the Facility. Any change in ownership or corporate control 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.
37. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
38. The parties' consent to service of a final order by e-mail at the following valid e-mail addresses: Weiner.Marc@epa.gov (for Complainant), and SJeffs@igiwax.com (for Respondent).
39. Except as qualified by paragraph 32, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VII. EFFECT OF CONSENT AGREEMENT

40. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations alleged in Section V.
41. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board/ Regional Judicial Officer, or other delegatee.
42. Any violation of this Agreement, and subsequently issued final order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties as provided in section 113(b), 42 U.S.C. § 7413(b) and adjusted for inflation pursuant to 40 C.F.R. part 19. The EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.
43. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
44. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
45. If and to the extent the EPA finds, after signing this Agreement, that any information provided

by Respondent was materially false or inaccurate at the time such information was provided to the EPA, the EPA reserves any and all of its legal and equitable rights.

VIII. EFFECTIVE DATE

46. This Agreement shall become effective on the date the Final Order is filed by the hearing clerk.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8,
Complainant.**

Date: _____

By: Patefield, Scott Digitally signed by Patefield, Scott
Date: 2021.09.02 08:38:32 -06'00'

Scott Patefield, Chief
Air Enforcement and Toxics Branch
Enforcement and Compliance Assurance Division

**SILVER EAGLE REFINING, INC.,
Respondent.**

Date: 9/1/21

By: 

Print: STEPHEN JEFFS

Title: C.O.O.

CERTIFICATE OF SERVICE

The undersigned certifies that the attached **CONSENT AGREEMENT** and the **FINAL ORDER** in the matter of **SILVER EAGLE REFINING, INC.; DOCKET NO.: CAA-08-2021-0007** was filed with the Regional Hearing Clerk on September 3, 2021.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney, and sent via certified receipt email on September 3, 2021, to:

Respondent

Stephen Jeffs
Chief Operating Officer, Wax Production & Refining
IGI | The International Group, Inc.
sjeffs@igiwax.com

EPA Financial Center

Peter Hendrickson
U. S. Environmental Protection Agency
Cincinnati Finance Center
Hendrickson.Peter@epa.gov

September 3, 2021

Haniewicz,
Melissa

Digitally signed by
Haniewicz, Melissa
Date: 2021.09.03
10:05:47 -06'00'

Melissa Haniewicz
Regional Hearing Clerk