

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to CAA Section 113(d), 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CAA, together with the specific provisions of the CAA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 112 of the CAA, 42 U.S.C. § 7412, authorizes EPA to promulgate regulations establishing emission standards or work practice standards for listed hazardous air pollutants. These emission standards are known as the National Emission Standards for Hazardous Air Pollutants (“NESHAP”).

3.2. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated regulations that govern the loading of gasoline at gasoline dispensing facilities (GDF). These NESHAP regulations are found at 40 C.F.R. Part 63, Subpart CCCCCC, NESHAP for Source Category: Gasoline Dispensing Facilities (“NESHAP-GDF”).

3.3. The requirements of 40 C.F.R. § 63.11110-63.11132 of the NESHAP-GDF apply to each affected source, which is each GDF located at an area source. The affected source includes each gasoline cargo tank during the delivery of product to a GDF and each storage tank. 40 C.F.R. § 63.11111(a).

3.4. 40 C.F.R. § 63.11118(d) of the NESHAP-GDF provides that cargo tanks unloading at a GDF with monthly throughput of 100,000 gallons or more of gasoline must comply with the management practices in Table 2 to 40 C.F.R. Part 63, Subpart CCCCCC (“Table 2”).

3.5. Table 2 provides that an owner or operator of a gasoline cargo tank must not unload gasoline into a storage tank at a GDF subject to the NESHAP-GDF unless the following conditions are met:

- a. All hoses in the vapor balance system are properly connected;
- b. The adaptors or couplers that attach to the vapor line on the storage tank have closures that seal upon disconnect;
- c. All vapor return hoses, couplers, and adapters used in the gasoline delivery are vapor-tight;
- d. All tank truck vapor return equipment is compatible in size and forms a vapor-tight connection with the vapor balance equipment on the GDF storage tank;
- e. All hatches on the tank truck are closed and securely fastened; and
- f. The filling of storage tanks at the GDF is limited to unloading from vapor-tight gasoline tanks. Documentation that the cargo tank has met the specifications of EPA Method 27 must be carried with the cargo tank, as specified in § 63.11125(c).

3.6. Respondent is a “person” as that term is defined in CAA § 302(e), 42 U.S.C. § 7602(e).

3.7. Respondent is an owner and operator of an “affected source” as that term is defined by the NESHAP-GDF, 40 C.F.R. § 63.11111(a).

3.8. The Nez Perce Express, located at 17372 Nez Perce Road, Lewiston, Idaho, is a GDF at an area source.

3.9. Respondent was the sole source provider of gasoline delivered to the Nez Perce Express between January 10, 2011, and January 13, 2012.

3.10. The Nez Perce Express GDF has a monthly throughput of more than 100,000 gallons of gasoline, but did not have a vapor balance system in place between January 10, 2011, and January 13, 2012.

3.11. Respondent violated NESHAP Subpart CCCCCC, 40 C.F.R. § 63.11118(d), by failing to comply with the management practices enumerated in Table 2 to 40 C.F.R. Part 63, Subpart CCCCCC between January 10, 2011, and January 13, 2012.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations set forth in Part III of this CAFO.

4.3. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has taken into consideration the size of the business, the economic impact of the penalty on the business, Respondent's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, the economic benefit of noncompliance, and the seriousness of the violations, as well as other relevant factors. After considering these factors in accordance with EPA's Clean Air Act Stationary Source Civil Penalty Policy, EPA has determined, and Respondent agrees, that an appropriate penalty to settle this action is forty eight thousand dollars (\$48,000).

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check, Respondent's name and address, the case name and the docket number of the case.

4.6. Respondent must deliver photocopies of the check described in Paragraph 4.5 via United States mail to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Donald Dossett
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-184
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), together with interest, fees, and additional penalties described below. In any such collection action, the validity, amount, and appropriateness of the Order or penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order set forth in Part V provided, however, that no interest

shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) the United States' enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.2 above, each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations contained in this CAFO and to appeal the Final Order set forth in Part V.

4.12. The provisions of this CAFO shall bind Respondent and its officers, directors, agents, servants, employees, successors, and assigns.

V. FINAL ORDER

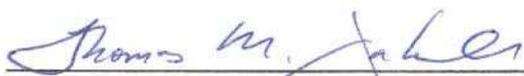
5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with these terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CAA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall 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 CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder.

5.3. Respondent shall pay a civil penalty in the amount of forty eight thousand dollars (\$48,000), as provided in Part IV above.

5.4. This Final Order is effective upon filing.

SO ORDERED this 11th day of September, 2012.



THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

8/31/2012

FOR RESPONDENT:



TIM O'NEAL, Vice President Marketing
CityServiceValcon, LLC

DATED:

9/6/2012

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: CityServiceValcon, LLC Docket No.: CAA-10-2012-0165** was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Jillian Bunyan
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Tim O'Neal
CityServiceValcon, LLC
P.O. Box 1
640 West Montana
Kalispell, MT 59903

DATED this 11th day of Sept, 2012



Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10

