

✓

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED  
2013 AUG 29 PM 2:31  
REGIONAL CLERK  
EPA REGION VI

IN THE MATTER OF:                     §  
   §  
CALUMET PENRECO, LLC,             §  
DICKINSON, TEXAS                   §  
   §  
RESPONDENT                             §  
   §

EPA DOCKET NO.  
CAA-06-2013-3327

---

**CONSENT AGREEMENT AND FINAL ORDER**

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

**I. CONSENT AGREEMENT**

1. On July 3, 2013, Complainant commenced this proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), by filing a Complaint and Notice of Opportunity for a Hearing pursuant to 40 CFR §§ 22.13, and 22.34(b) (the Complaint).

2. The Complaint alleges that Respondent, as the owner and operator of a specialty chemical plant in Dickinson, TX (the Facility), is subject to the general duties in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), including: (1) the duty to identify hazards which may result from accidental releases of extremely hazardous substances using appropriate hazard

assessment techniques; (2) the duty to design and maintain a safe facility taking such steps as are necessary to prevent releases; and (3) the duty to minimize the consequences of accidental releases which do occur.

3. The Complaint further alleges that Respondent violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), by failing to comply with one or more of its general duties with respect to an accidental release of Oleum that occurred at the Facility on July 8, 2012.

4. The Complaint proposed the assessment of an administrative penalty of Thirty Thousand Dollars (\$30,000.00) as authorized by Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 CFR Part 19. In determining the proposed penalty, Complainant considered the statutory penalty factors provided in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1).

5. Respondent and Complainant have agreed to the terms and conditions of a settlement, which are provided in this consent agreement, and consent to the issuance of this final order to conclude this proceeding pursuant to 40 CFR § 22.18(b)(2) and (3).

6. For the purposes of this proceeding, Respondent neither admits nor denies the factual allegations and conclusions of law in both the Complaint and this CAFO; however, Respondent admits the jurisdictional allegations in the Complaint and this CAFO.

7. 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.

8. Respondent 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 the Complaint.

9. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind Respondent to the terms and conditions of this CAFO.

10. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

11. Compliance with the terms and conditions of this CAFO shall resolve only Respondent's liability for Federal civil penalties for the violations alleged in the Complaint.

12. This CAFO and any provision herein shall not be construed as an admission of liability in any criminal, civil or any administrative proceeding, except in an action or proceeding to enforce or seek compliance with this CAFO; however, this CAFO may be considered a "prior violation" under Section II (B)(4)(c) of the Clean Air Act Stationary Source Civil Penalty Policy (October 1991) for purposes of evaluating a "history of noncompliance".

#### **A. CIVIL PENALTY**

13. Respondent has agreed to pay, and consents to the assessment of, a civil penalty in the amount of Thirty Thousand Dollars (\$30,000.00).

14. Compliance with the terms and conditions of this CAFO, including payment of the assessed civil penalty, shall resolve only Respondent's liability for Federal civil penalties for the violations and facts alleged in the Complaint.

15. Within thirty (30) days of the effective date of this CAFO, the 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

Consent Agreement and Final Order  
Calumet Penreco, LLC  
EPA Docket Number CAA 06-2013-3327

three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) 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. Fed Ex), the check(s) should be remitted to:

U.S. Bank  
Government Lockbox 979077 US EPA Fines & 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 = 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" with a phone number of (412) 234-4381.

**PLEASE NOTE:** Docket number CAA-06-2012-3327 shall be clearly typed on the check, or other method of payment, 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 docket numbers of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket numbers of the 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:

Jeffrey Clay  
Assistant Regional Counsel (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

And to:

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 this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

16. 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.

17. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

18. Pursuant to 31 U.S.C. § 3717 and 40 CFR § 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 respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 CFR § 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, in accordance with 40 CFR § 13.11(b).

19. 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, consistent with 40 CFR § 13.11(c), 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. Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent as provided in 31 CFR § 901.9(d). Other penalties for failure to make a payment may also apply.

20. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such 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 (10%) of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

**B. RETENTION OF ENFORCEMENT RIGHTS**

21. The 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.

22. 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 CFR Part 68.

23. 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, contaminants, hazardous substances on, at or from the Facility. Furthermore, 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.

**C. COSTS**

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

**D. COMPLIANCE**

25. Respondent hereby certifies that as of the date of the execution of this CAFO, that it has corrected the violations alleged herein at the Facility, and is now, to the best of its knowledge, in compliance with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

**E. EFFECTIVE DATE**

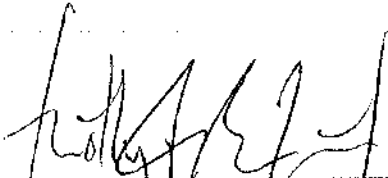
26. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

Consent Agreement and Final Order  
Calumet Penreco, LLC  
EPA Docket Number CAA 06-2013-3327

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

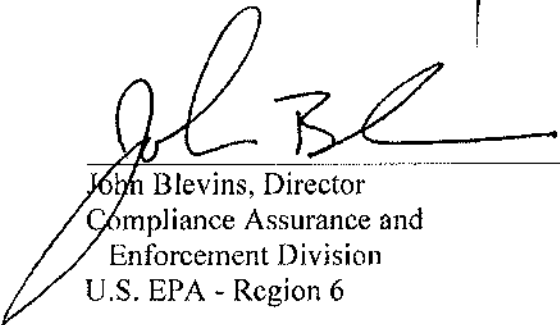
**FOR THE RESPONDENT:**

Date: August 21, 2013

  
\_\_\_\_\_  
Calumet Penreco, LLC

**FOR THE COMPLAINANT:**

Date: 8-27-13

  
\_\_\_\_\_  
John Blevins, Director  
Compliance Assurance and  
Enforcement Division  
U.S. EPA - Region 6



Consent Agreement and Final Order  
Calumet Penreco, LLC  
EPA Docket Number CAA 06-2013-3327

## II. 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 CFR 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 the Complaint. 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 and pay a civil penalty in the amount of Thirty Thousand Dollars (\$30,000.00) following the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 CFR § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

8/28/13



Regional Judicial Officer  
U.S. EPA, Region 6

Consent Agreement and Final Order  
Calumet Penreco, LLC  
EPA Docket Number CAA 06-2013-3327

**CERTIFICATE OF SERVICE**

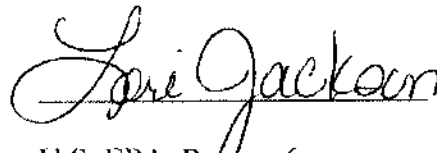
I hereby certify that on the 29<sup>th</sup> day of August, 2013, the original and one copy of the foregoing CAFO was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 70123250000165001423

Mr. Edward Lewis, Esquire  
Counsel to Calumet Penreco, LLC  
Fullbright & Jaworski, LLP  
1301 McKinney, Suite 5100  
Houston, Texas 77010-3095

CT Corporation System  
Registered Agent for Calumet Penreco, LLC  
359 N. St. Paul Street, Suite 2900  
Dallas, TX 75201-4234 USA

Date: 8-29-2013

  
U.S. EPA, Region 6  
Dallas, Texas