

ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2017 MAR 29 PM 1:08
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

Motiva Enterprises LLC

Port Arthur, Texas

Respondent

**CONSENT AGREEMENT AND FINAL
ORDER
EPA DOCKET NO. CAA-06-2017-3335**

CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Motiva Enterprises LLC (“Respondent” or “PAR”), at its Port Arthur, Texas refinery, have agreed to simultaneously commence and resolve this matter through issuance of this Consent Agreement and Final Order (“CAFO”).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act, as amended (CAA or the Act), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), 22.18(b)(3), and 22.34.

2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A).

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO. However, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4. Respondent waives any right to contest the allegations in the CAFO and its right to appeal the 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 CAFO.

5. Respondent does not waive any rights or defenses which have been raised or could be raised in any state law proceeding. This CAFO may not be used in any Federal or state proceeding except proceedings by EPA to enforce this CAFO.

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

7. Respondent consents to the issuance of this CAFO, and consents to the assessment and payment of the stated Federal civil monetary penalty in the amount and by the method set out in this CAFO.

8. Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this CAFO.

9. Nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, and criminal authorities, or that of other Federal, state, or local agencies or departments to obtain penalties or injunctive relief under Federal, state, or local laws or regulations.

10. Respondent represents that the undersigned representative is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind the Respondent to the terms and conditions of this CAFO.

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

II. STATUTORY AND REGULATORY BACKGROUND

12. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of regulated substances or other extremely hazardous substances and to minimize the consequences of any such release that does occur.

13. Pursuant to CAA § 112(r)(7), 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate regulations dictating release prevention, detection, and correction requirements.

14. On June 20, 1996, the EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the Act.

15. Under 40 C.F.R. § 68.10(a), an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process (“Covered Process”), as determined under 40 C.F.R. § 68.115, shall comply with the requirements of 40 C.F.R. Part 68 no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under Section 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

16. Under 40 C.F.R. § 68.12(a), an owner or operator of a stationary source subject to Part 68 requirements must submit a Risk Management Plan (“RMP”) as provided in 40 C.F.R. Part 68 Subpart G (§§ 68.150-68.185) that reflects all covered processes at the stationary source.

17. 40 C.F.R. Part 68 provides general requirements applicable to owners or operators of a stationary source subject to Part 68. It also establishes requirements that apply to an owner or operator based on whether the stationary source operates processes subject to one of three “Programs” -- Program 1, Program 2, and Program 3.

18. Under 40 C.F.R. § 68.12(d), the owner or operator of a stationary source with a process subject to the “Program 3” requirements of the Part 68 regulations, as determined pursuant to 40 C.F.R. § 68.10(d), must comply with the chemical accident prevention requirements of 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program, at 40 C.F.R. §§ 68.65-68.87).

19. Under Sections §§ 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) & 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, a requirement or prohibition of any rule promulgated under the CAA, 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.

20. As adjusted by the 2016 Civil Monetary Penalty Inflation Adjustment Rule (81 Fed. Reg. 43091), 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$44,539 per day of violation for a violation occurring after November 2, 2015.

21. “Covered process” is defined in 40 C.F.R. § 68.3 as a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

22. “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.

23. "Process" is defined in 40 C.F.R. § 68.3 as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

24. "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.

25. "RMP" is defined in 40 C.F.R. § 68.3 as the risk management plan required under subpart G of 40 C.F.R. Part 68.

26. "Stationary source" is defined in Section 112(r)(2)(C) of the CAA and 40 C.F.R. § 68.3 as 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.

27. "Threshold quantity" is defined in 40 C.F.R. § 68.3 as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA as amended, listed in § 68.130 and determined to be present at a stationary source as specified in § 68.115 of this part.

28. "Owner or operator" shall mean any person who owns, leases, operates, controls, or supervises a stationary source.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

29. Respondent is a limited liability company and authorized to do business in the State of Texas.

30. Respondent is a “person” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).

31. At all times relevant to this CAFO, Respondent owned and operated an oil refinery (“Facility”), which is located at 2555 Savannah Avenue, Port Arthur, Texas 77640.

32. The Facility operates a variety of processes to produce petroleum products (e.g., propane, butane, gasoline, diesel, jet fuel, furnace oil, etc.) from raw crude oil.

33. On August 11-14, 2014, EPA Region 6 conducted an inspection of the Facility pursuant to the CAA § 114(a)(2). The inspection focused on compliance with CAA § 112(r) and 40 C.F.R. Part 68.

34. PAR's RMP lists covered processes subject to Program 3 requirements.

35. The regulated substances that are held above the threshold quantities identified in 40 C.F.R. § 68.130 are: propane, butane, and hydrogen sulfide.

36. As a facility with Program 3 processes, PAR must develop and implement a management system, conduct a hazard assessment, implement the prevention requirements of § 68.65 through § 68.87, develop and implement an emergency response program, and submit the data elements from § 68.175 in their RMP.

IV. VIOLATIONS

Count 1. Inaccurate Piping and Instrument Diagram

37. Complainant hereby restates and incorporates by reference Paragraphs 1 through 36 above.

38. Pursuant to 40 C.F.R. § 68.65(d)(1)(ii), the owner or operator must maintain a compilation of written process safety information, which includes accurate piping and instrument diagrams (P&IDs).

39. As of the inspection date, the P&ID for the VPS5 Unit was not completely accurate.

40. Respondent's failure to maintain a compilation of written process safety information, including accurate P&IDs, constitutes a violation of 40 C.F.R. § 68.65(d)(1)(ii).

Count 2. Management of Change

41. Complainant hereby restates and incorporates by reference Paragraphs 1 through 36 above.

42. Pursuant to 40 C.F.R. § 68.75(a), the owner or operator shall establish and implement written procedures to manage changes to process equipment.

43. Respondent established and implemented written management of change (MOC) procedures in place that require the MOC team to meet and fill out an MOC form.

44. MOC# M20132748-001 "VPS5 Heater Outlet Valve Removal" had eleven "Yes/No" checkbox questions that were left blank because they were deemed inapplicable. A subsequent personnel interview with the PSM Specialist confirmed that each box, including inapplicable boxes, should have been checked either "Yes" or "No" before it was approved.

45. Respondent's failure to fully complete MOC# M20132748-001 before it was approved constitutes a violation of 40 C.F.R. § 68.75(a).

Count 3. Emergency Response Program

46. Complainant hereby restates and incorporates by reference Paragraphs 1 through 36 above.

47. Pursuant to 40 C.F.R. § 68.95(a)(2), the owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment, including procedures for the use of emergency response equipment and for its inspection, testing, and maintenance.

48. Motiva was unable to document that it had adequately implemented its procedure for inspection, testing, and maintenance of emergency response equipment, specifically inspection records for fire extinguishers, hoses, and fire trucks.

49. Respondent's failure to adequately document the implementation of its procedures for inspection, testing, and maintenance of emergency response equipment constitutes a violation of 40 C.F.R. § 68.95(a)(2).

Count 4. Required Corrections

50. Complainant hereby restates and incorporates by reference Paragraphs 1 through 36 above.

51. Pursuant to 40 C.F.R. § 68.195(b), the owner or operator shall submit a correction within one month of any change in the Emergency Contact information required under 40 C.F.R. § 68.160(b)(6).

52. On July 31, 2014, an EPA inspector attempted to contact the Emergency Contact listed on the RMP, identified as Manager Health, Safety, and Emergency Response, at the listed phone number. The number had been reassigned to a fax machine.

53. Further investigation revealed that the former Manager Health, Safety, and Emergency Response had transferred from the facility on December 1, 2013.

54. Respondent failed to update the emergency contact's telephone phone number within a month of December 1, 2013.

55. Respondent's failure to update its RMP within a month of a change in emergency contact information constitutes a violation of 40 C.F.R. § 68.195(b).

V. CIVIL PENALTY AND TERMS OF SETTLEMENT

56. Section 113(d)(1) of CAA, 42 U.S.C. § 7413(d)(1), authorizes the Administrator to assess a penalty up to \$44,539 for each violation of any requirement of Section 112(r) of CAA, 42 U.S.C. § 7412(r).¹

57. Upon consideration of the entire record herein, including the Respondent's having taken measures to prevent a recurrence of the above described incident, and upon consideration of 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 violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, specific facts and equities, litigation risks, and other factors as justice may require, the parties agree that **Fifty Six Thousand Dollars (\$56,000)** is an appropriate penalty to resolve this matter.

58. Within sixty (60) days of this fully executed CAFO, Respondent shall pay \$56,000 by cashier's check, certified check, or wire transfer made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of five (5) ways: regular U.S. Postal Service mail, to include certified mail; overnight mail; wire transfer; Automated Clearinghouse for receiving US currency; or On Line Payment. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

¹ The maximum penalty under Section 113(d)(1) of CAA, 42 U.S.C. § 7413(d)(1) was increased by the Federal Civil Penalties Inflation Adjustment Act Improvements Act (2015), 28 C.F.R. § 85, to up to \$44,539 per day for violations occurring after November 2, 2015.

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

For overnight mail (non-U.S. Postal Service, e.g. FedEx), the check(s) should be remitted

to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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”

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact – Jesse White (301) 887-6548

For On Line Payment:

WWW.PAY.GOV

Enter sfo 1.1 in search field

Open form and complete required fields.

59. PLEASE NOTE: The docket number CAA 06-2017-3335 shall be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following:

Marie Stucky
Enforcement Officer (6EN-AS)
Chemical Accident Enforcement Section
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue Suite 1200
Dallas, Texas 75202-2733;

Lorena Vaughn
Region 6 Hearing Clerk (6RC-D)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

60. 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.

61. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 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 sixty (60) 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 C.F.R. § 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. See 40 C.F.R. § 13.11(b).

62. EPA will also assess a fifteen dollar (\$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 fifteen dollars (\$15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, 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. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

63. Pursuant to Section 113(d)(5) of the Act, 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, attorney's 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 ten (10) percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

64. This CAFO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of any equipment or technology installed by the Respondent in connection with any additional settlement terms undertaken pursuant to this CAFO. Nothing in this CAFO shall be construed to prohibit or prevent the federal, state, or local government from developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required.

65. This document constitutes a “Final Order” as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of “prior such violations.”

VI. RETENTION OF ENFORCEMENT RIGHTS

66. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal or state laws, regulations, statutes, or permitting programs.

67. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.

68. 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, or regulated or other extremely hazardous substances at, on, or from the Respondent’s facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA’s civil, injunctive, or 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, regulations, or subparts thereof.

VII. COSTS

69. Each party shall bear its own costs and attorney's fees.

IN THE MATTER OF Motiva Enterprises LLC
EPA DOCKET NUMBER CAA-06-2017-3335

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

IT IS SO AGREED:

FOR THE RESPONDENT:


Date: 3/8/17



Motiva Enterprises LLC

Gregory P. Lucchesi
Refinery Manager

For United States Environmental Protection Agency, Region 6:

Date: 

3/27/2017

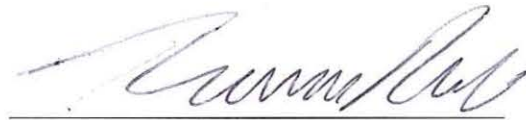
Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. 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 this CAFO. 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 as set forth in the Consent Agreement, including the assessment of civil penalties. In accordance with 40 C.F.R. Part 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

3/29/17



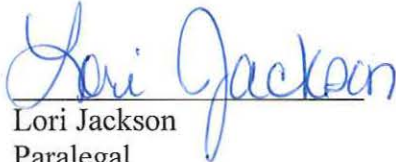
Thomas Rucki
Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 29 day of March, 2017, the original and one copy of the foregoing Consent Agreement and Final Order 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 was delivered to the following individual(s) by the method indicated below:

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7001 0360 0003 6674 8509

Greg Lucchesi, General Manager
MOTIVA ENTERPRISES LLC
Port Arthur Refinery
2555 Savannah Avenue
Port Arthur, TX 77640



Lori Jackson
Paralegal
U.S. EPA Region 6, Dallas, Texas