

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

2011 SEP 29 AM 11:26

FILED
EPA REGION VIII
RECORDS CLERK

IN THE MATTER OF:)

Tesoro Refining and Marketing Company)
474 West 900 North)
Salt Lake City, Utah 84103-1494)

Respondent.)

ADMINISTRATIVE ORDER

DOCKET NO. : CAA-08-2011-0030

INTRODUCTION (JURISDICTION)

1. This Administrative Order (Order) is issued to the Tesoro Refining and Marketing Company (Respondent) pursuant to Title I, § 113(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7413 (a)(3)(B). Section 113(a)(3)(B) grants to the Administrator of the U.S. Environmental Protection Agency (EPA) the authority to make a finding of violation of a requirement or prohibition of Title I, and upon such a finding, to issue an order requiring a person to comply with such requirement or prohibition. This authority was delegated by the Administrator to the Regional Administrators on December 20, 1996, by EPA Delegation 7-6-A, and within Region 8, was redelegated to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice (ECEJ).

2. Pursuant to § 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to § 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances 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.

DEFINITIONS

3. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines "stationary source" in the relevant part, 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.

FINDINGS OF FACT

4. Respondent is the owner and operator of the Tesoro Salt Lake City Refinery located at 474 West 900 North, Salt Lake City, Utah (the Facility) as those terms are defined by § 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).
5. Respondent handles, stores, and uses “extremely hazardous substances” pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).
6. EPA conducted an inspection of the Facility on September 4, 2008, to assess compliance with § 112(r) of the CAA.
7. At the time of the inspection, Tank 268 contained Gas Oil, an “extremely hazardous substance” pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Specifically, the contents of Tank 268 (Gas Oil) is a mixture of flammable hydrocarbons used as “feed” for the fluid catalytic cracking unit (FCCU).
8. Tank 268 is located approximately 25 feet from the base of the north flare.
9. At the time of EPA’s inspection, EPA reviewed two studies related to the north flare which were conducted for Tesoro and Amoco Oil Company (former owner) by two separate third party entities. The first study, conducted in 1993, listed the location of the tank as being “virtually underneath” the north flare and a possible fire hazard in the case of a burning liquid relief flaring incident. The second study, conducted in 2007, indicated that there is a safety concern from heat intensities of the north flare due to the current design and the location of Tank 268 not allowing increased load. There are several plausible worst case scenarios (loss of power to the FCCU and/or fire or other incident in the alkylation unit) that would increase load to the north flare. The 2007 study listed the range of peak radiation intensities from the flare to the top of Tank 268 to be 4,800 – 9,300 Btu/h-ft² at maximum capacity. The study also states that heating intensities above 3,000 [Btu/h-ft²] are generally considered a requirement for protection of equipment. At the time of the 2008 EPA inspection, Tesoro stated they were reviewing the 2007 study. As of August 1, 2011, Tank 268 is used for storing “extremely hazardous substances”.
10. Tesoro’s Material Safety Data Sheet (MSDS) for Gas Oil states that the requirements for storage areas and containers are to “keep away from flame, sparks, excessive temperatures and open flame.”
11. Subsequent to the September 4, 2008 inspection, EPA conducted a review of the applicable industry standards related to process tank siting near refinery flares. Several of the standards reviewed are listed below:
 - a. The American Institute of Chemical Engineers operates the Center for Chemical for Process Safety (CCPS). CCPS’s publication, “Guidelines for Facility Siting and Layout (2003), Appendix A, Table E”, recommends a minimum distance of 500 feet between flares and all other facilities “if calculations are not used to determine the radiation levels”

- b. XL Global Asset Protection Services (GAPS) publishes guidelines on property loss prevention. According to GAPS, GAP 2.5.2 is one of their most popular guidelines and customers/subscribers include refiners and the United States Chemical Safety Board (CSB). GAP 2.5.2 "Oil and Chemical Plant Layout and Spacing (2007)" recommends 300 feet between flares and atmospheric storage tanks, such as Tank 268.
- c. The American Petroleum Institute (API) publishes consensus standards for the oil and gas industry. API 521 "Pressure-relieving and Depressuring Systems (2007)" recommends 3,000 Btu/h-ft² as the maximum design for thermal radiation for personnel and states:

In most cases, equipment can safely tolerate higher degrees of heat density than those defined for personnel. However, if any items vulnerable to overheating problems are involved, such as construction materials that have low melting points (e.g. aluminum or plastic), heat-sensitive streams, flammable vapour spaces and electronic or electrical equipment, then the effect of radiation heat on them might need to be evaluated. If an evaluation is necessary, a heat balance can be performed to determine the resulting surface temperature for comparison with the acceptable temperatures for the equipment.

12. On October 21, 2009, an incident occurred involving Tesoro's south flare which is currently being investigated by the CSB. The CSB quoted Tesoro's description as "liquid hydrocarbons were released from a flare stack during an effort to restart the refinery's crude unit. The hydrocarbons were ignited in a pool fire that extended from the base of the stack and damaged a trailer and other equipment that were positioned nearby." This incident further underscores the EPA's concern that a serious incident may occur as a result of Tank 268's proximity to the north flare.

CONCLUSIONS OF LAW

13. Respondent is, and at all times referred to herein was, a "person" as defined by § 302(e) of the CAA, 42 U.S.C. § 7602(e).

14. The Facility is a "stationary source" pursuant to § 112(r)(2)(C) of the CAA and 40 C.F.R. § 68.3.

15. At its facility, Respondent handles, and/or stores, "extremely hazardous substances." "Extremely hazardous substances" are regulated pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

16. Pursuant to Section 112(r)(1) of the CAA, Respondent has a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to: (a) identify hazards which may result from accidental releases of a regulated substance or other extremely hazardous substance, using appropriate hazard assessment techniques, (b) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (c) minimize the consequences of accidental releases which do occur.

17. Based on information available to EPA, including information gathered during the inspection performed by EPA at the Facility and the Findings of Fact set forth above, EPA has determined that Respondent failed to satisfy the general duty referred to in Paragraph 16 above, in that, among other things, Respondent has not designed and maintained a safe facility taking such steps as are necessary to prevent releases of a regulated substance. Therefore, Respondent violated the provisions of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

ORDER

18. Based upon the foregoing Findings of Fact, Findings of Violations, other information available to EPA, it is hereby ordered that Respondent comply with the requirements set forth below. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein.

PARTIES BOUND

19. The provisions of this Order shall apply to Respondent and its officers, agents, servants, employees, and successors and to all persons, firms and corporations acting under, through or for Respondent.

WORK TO BE PERFORMED

20. The Facility shall cease storing "extremely hazardous substances" in Tank 268 or take at least the following steps in order to come into compliance with 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), by identifying hazards which may result in accidental releases of regulated substances from the Facility, designing and maintaining a safe facility taking such steps as are necessary to prevent releases, and minimize the consequences of accidental releases which do occur:

- a. Within 60 days of the effective date of this Order, Respondent shall perform the following activities and provide the following information:
 - i. Conduct a heat balance analysis on Tank 268 in accordance with API 521. The analysis shall include a comparison with referenced acceptable temperatures for Tank 268.
 - ii. Provide a detailed analysis of the worst case flaring incident at the north flare. This analysis shall contain the impact of the worst case incident on Tank 268 including calculated radiant heat and specific safeguards in place to protect the tank. If insulation of the tank is considered a safeguard, provide the type of insulation used, date insulation was applied, and the name of the company that performed the work. Include any calculations and any references to industry standards.
 - iii. Provide the name plate data and all internal and external inspection reports for Tank 268.

- b. Within 14 days of completion of the activities required pursuant to subparagraph 20.a. , Respondent shall submit a report to EPA, detailing the activities conducted at the Facility. The report shall include a verification statement confirming that Respondent has complied with each of the requirements of subparagraph 20.a. above. The verification shall include the following certification, signed by an officer of Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- c. The submissions required by the above subparagraphs shall be made to:

David Cobb, 8ENF-AT
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

21. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R part 2, subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law.

ENFORCEMENT

22. Section 113(a)(3) of the CAA provides that upon failure to comply with an order issued under § 113(a)(3)(B), the EPA Administrator may, inter alia: issue an administrative penalty order pursuant to § 113(d) for civil administrative penalties of up to \$25,000 per day of violation; or bring a civil action pursuant to § 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and the Civil Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009), this penalty maximum was increased to \$37,500 per day. In addition, Respondent may be subject to an administrative or civil action for similar penalties and/or injunctive relief, pursuant to §§ 113(b) and (d) of the CAA, based on the violations addressed by this Order. Furthermore, for any person who knowingly violates the provisions of the CAA as set forth in § 113(c) of the CAA, § 113(c) provides for criminal penalties or imprisonment, or both.

23. This Order shall not relieve Respondent of its obligation to comply with all applicable federal, State, and local laws, regulations and other legal requirements, including but not limited to § 112(r)(1) of the CAA, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State or local permit.

24. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of a regulated substance, other extremely hazardous substance, or other substance on, at, or from the Facility. EPA reserves the right to bring an action against Respondent assessing or seeking penalties and/or other relief for any violations, including, without limitation, the violations referred to in the Findings of Fact and Conclusions of Law set forth above. This Order shall not constitute or be construed as a release of any liability that the Respondent or any other person has under the CAA or any other law. EPA also reserves all of its rights to obtain access to the Facility and require Respondent's submission of information to EPA.

EFFECTIVE DATE;
OPPORTUNITY FOR CONFERENCE

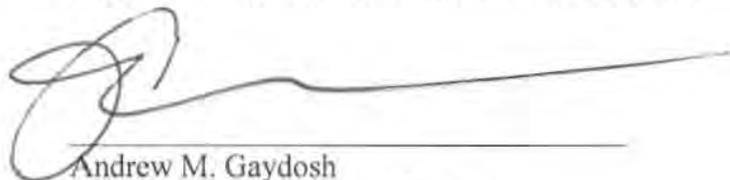
25. Respondent may request a conference with EPA concerning the violations alleged in, and the requirements of, this Order. Respondent has the right to be represented by counsel at such a conference. If a conference is held, this Order shall become effective the day after the conference, unless the effective date is extended by EPA. If a conference is not timely requested, the Order shall become effective eleven (11) days after Respondent's receipt of the Order.

26. A request for a conference must be made in writing in time for EPA's receipt no later than ten (10) days after Respondent's receipt of this Order. The written request for a conference may be sent by fax or mail. The conference may be conducted in person or by telephone.

27. The request for a conference and other inquiries concerning this Order should be addressed to:

U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Attn: David Cobb, ENF-AT
Email: cobb.david@epa.gov
Phone: (303) 312-6592
Fax: (303) 312-6409

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement Compliance
and Environmental Justice

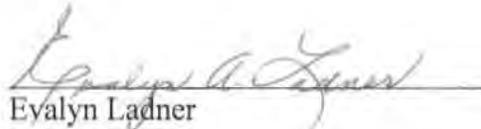
Date: 9/29/2011

**In the Matter of:
Tesoro Refining and Marketing Company
Tesoro Salt Lake City Refinery**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the ADMINISTRATIVE ORDER were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail, Postage Pre-Paid, to:

Tesoro Salt Lake City Refinery
474 West 900 North
Salt Lake City, Utah 84103-1494
Attention: Jeffery Handwerk, RMP/PSM Coordinator


Evalyn Ladner