



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

March 18, 2011

Ref: 8ENF-L

Peter M. Johnson
President, Sinclair Wyoming Refining Company
550 East South Temple
Salt Lake City, UT 84102-1005

Re: In the Matter of Sinclair Wyoming Refining
Company - Administrative Consent Order
(EPA Docket No. CAA-08-2011-0007)

Dear Mr. Johnson:

Enclosed is a copy of the fully-executed Administrative Consent Order (Order) in the above-referenced matter. Pursuant to Section 37 of the Order, the effective date of the Order is today, March 18, 2011.

If you have any questions, please direct technical questions to Scott Whitmore at (303) 312-6317, and those of a legal nature to Sheldon Muller at (303) 312-6916.

Sincerely,

Michael T. Risner
for

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

Enclosure

cc (with enclosure):

William M. Bumpers, Esq.
John Fogarty – EPA HQ
Jim Freeman – DOJ



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)
)
Sinclair Wyoming Refining Company)
)
Sinclair Wyoming Refinery)
Sinclair, Wyoming)
)
Respondent.)
)

Proceedings Pursuant to Section 113(a)(3) and
(d) and 114(a)(1) of the Clean Air Act, 42
U.S.C. § 7413(a)(3) and (d) and 7414(a)(1)

Administrative Consent Order

Docket No. CAA-08-2011-0007

I. STATUTORY AUTHORITY

1. This Administrative Consent Order (Order) is issued pursuant to §§ 113(a)(3) and (d) and 114(a)(1) of the Clean Air Act (the Act), as amended on November 15, 1990, by P.L. 101-549, 42 U.S.C. §§ 7413(a)(3) and (d) and 7414(a)(1), to Sinclair Wyoming Refining Company (SWRC) by the Assistant Regional Administrator of EPA Region 8's Office of Enforcement, Compliance and Environmental Justice to whom the authority to issue such orders has been delegated.

II. APPLICABILITY AND BINDING EFFECT

2. SWRC agrees that it is subject to the terms of this Order and that it will not contest the validity of the Order in any subsequent proceeding to implement or enforce its terms. SWRC waives any opportunity that it may have to a hearing, and, except as otherwise provided in the dispute resolution provisions of Section VI of this Order, to confer.

3. Beginning on the effective date of this Order, SWRC will give written notice of the Order to any successors in interest prior to the transfer of ownership or operation of any portion of the Sinclair Wyoming Refinery and will provide a copy of the Order to any successor in interest. SWRC

will notify EPA and WDEQ by providing written notice to the individuals listed in Paragraphs 14 and 31, of any successor in interest at least thirty (30) days prior to any such transfer.

4. SWRC will condition any transfer, in whole or in part, of ownership of, operation of, or other interest (exclusive of any non-controlling non-operational shareholder interest) in, the Sinclair Wyoming Refinery upon the execution by the transferee of an amendment to the Order which makes the relevant terms and conditions of the Order applicable to the transferee. As soon as possible prior to the transfer, SWRC will notify EPA and WDEQ of the proposed transfer and of the specific provisions in the Order that the transferee is assuming. Simultaneously, SWRC will provide a certification from the transferee that the transferee has the financial and technical ability to assume the obligations and liabilities under this Order that are related to the transfer. By no later than sixty (60) days after the transferee executes a document agreeing to substitute itself for SWRC for all terms and conditions of this Order, SWRC and the transferee will jointly ask, in writing, that the Assistant Regional Administrator of EPA Region 8's Office of Enforcement, Compliance and Environmental Justice amend the Order by substituting the transferee as the Respondent for those terms and conditions of this Order that apply to the interest in the Sinclair Wyoming Refinery that is being transferred. SWRC will not be released from the obligations and liabilities of any provision of this Order unless and until the Order is amended by EPA.

III. BACKGROUND

5. On June 30, 2008, the United States District Court for the District of Wyoming entered a consent decree (Consent Decree) between, among others, SWRC, the State of Wyoming and the United States. Paragraph 27 of the Consent Decree established, *inter alia*, a particulate matter (PM) emission limit of 1.0 pounds of PM per 1000 pounds of coke burned, effective December 31, 2009,

for the fluid catalytic cracking unit (FCCU) at the Sinclair Wyoming Refinery owned and operated by SWRC. On January 4, 2010, the United States District Court for the District of Wyoming approved certain material modifications to the Consent Decree in the form of a Second Amendment to Consent Decree (Second Amendment). The Second Amendment, *inter alia*, amended Paragraph 27 of the Consent Decree by further restricting the Sinclair Wyoming Refinery's particulate emission limit to 0.9 pounds of PM per 1000 pounds of coke burned, effective June 30, 2010.

6. In addition to the emission limit for PM set forth in the Consent Decree, SWRC is also subject to the emission limits for PM set forth in the New Source Performance Standards (NSPS) regulations at 40 C.F.R., Part 60, Subpart J, and the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations at 40 C.F.R., Part 63, Subpart UUU.

7. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), authorizes the Administrator of EPA to issue an order requiring compliance with the requirements of the Act and regulations promulgated pursuant to the Act, and to assess administrative penalties, pursuant to § 113(d) of the Act, 42 U.S.C. § 7413(d), for violations of such requirements. The Administrator has delegated her authority to issue such orders to the Regional Administrator, Region 8, pursuant to EPA Headquarters Delegation of Authority, Chapter 7-6-A. The Regional Administrator has, in turn, delegated this authority to the Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, Region 8, pursuant to EPA Region 8 Delegation of Authority, Chapter 7-6-A.

8. Paragraph 211 of the Consent Decree specifies stipulated penalties in the amount of \$3,000 for each calendar day in a calendar quarter on which the Sinclair Wyoming Refinery exceeds the emission limit for PM set forth in Paragraph 27 of the Consent Decree.

IV. FINDINGS

9. SWRC owns and operates the Sinclair Wyoming Refinery, which is located near Sinclair, Wyoming. SWRC is a corporation organized under the laws of the State of Wyoming with its principal office in Sinclair, Wyoming.

10. According to SWRC, on January 22, 2011, the Sinclair Wyoming Refinery experienced a complete loss of electric power from its public utility supplier. Subsequent events, due, in part, to the failure of refinery personnel to ensure back-up systems were in place and properly functioning, led to a fire in the electrostatic precipitator (ESP) that caused extensive damage to that unit and rendered it inoperable. SWRC has stated that it will take approximately 5-7 weeks to rebuild the ESP and bring it back on-line. The loss of electric power at the Sinclair Wyoming Refinery also caused the FCCU to shut down.

11. On or about March 5, 2011, SWRC restarted the FCCU without the ESP. SWRC has advised EPA that it is working expeditiously to bring the ESP back on line. Until the ESP is operational, emissions of PM from the FCCU will exceed Sinclair Wyoming Refinery's PM emissions limit as set forth in the Consent Decree. The resulting emissions from operating the FCCU without a functioning ESP will likewise result in violations of the NSPS regulations at 40 C.F.R., Part 60, Subpart J, and the NESHAP regulations at 40 C.F.R., Part 63, Subpart UUU.

12. SWRC has conducted emissions modeling to assess the impact of uncontrolled emissions (i.e., without the ESP) from the FCCU. SWRC's modeling relied upon the AERMOD model and was based on the following assumptions that SWRC states are accurate:

- a. The cyclone manufacturer estimated catalyst loss from the FCCU regenerator cyclones of 60 lb PM / hr which is the catalyst rate to the ESP and is based on operating the FCCU at a 21,000 bpd charge rate which is close to its demonstrated capacity.
- b. An ESP inlet PM loading of 75 lb / hr, which is the design basis for the ESP.
- c. For the PM₁₀ emission rate, SWRC assumed that all PM that would be emitted is PM₁₀.
- d. For the PM_{2.5} emission rate, SWRC used the PM_{2.5}/PM ratio obtained from the a November 17, 2010 PM_{2.5} test sampled downstream of the operating ESP for the PM_{2.5}/PM ratio of the PM emitted from the uncontrolled stack, resulting in a PM_{2.5} emission rate of 61.7 lb/hr (filterable+condensable).

V. COMPLIANCE PROGRAM

13. SWRC shall expeditiously complete reconstruction of the ESP so as to bring the ESP back on line as soon as practicable.
14. SWRC shall test the 780 FCCU Regenerator (Unit 9) (FCCU) for particulates as soon as practicable, but no later than 1 week after the unit started up without ESP controls, provided, however, that if SWRC shuts down the FCCU within that first week, it shall have 5 additional calendar days after starting the unit to conduct the test. The test shall consist of six total hours of runs (in any combination of 1-hour or ½ hour runs) and shall be conducted under conditions that are representative of the unit's performance. Three hours of runs shall be conducted prior to the addition of walnut shell media to the waste heat recovery boiler, and then one hour of runs shall be performed with the addition of walnut shell media to the waste heat recovery boiler. All of the runs will be averaged with proration for emissions during addition of walnut shell media prorated based on the amount of time addition occurs in the run, the total length of the run, and the total amount of

time of addition in a day in an effort to come up with representative average emission rate. For each run, SWRC shall follow the test methods specified in 40 C.F.R. § 60.106(b) using Reference Methods 1-4 and either 5B or 5F, and Methods 201 and 202. The test results shall be furnished to EPA Region 8 and the State of Wyoming verbally immediately after the testing is completed and the results are known, and in a written report as soon as possible, but in no event later than 5 calendar days after completion of the test with respect to the filterable component, and 10 calendar days with respect to the condensable component. The written report shall be furnished by email and regular mail to:

Air Program Director
c/o Scott Whitmore (8ENF-AT)
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
(303) 312-6317
whitmore.scott@epa.gov

Administrator, Air Quality Division
Wyoming Department of Environmental Quality
Herschler Building
122 West 25th Street
Cheyenne, WY 82002
(307) 777-3774
rgill@wyo.gov

15. Immediately upon receiving the results from the stack test required pursuant to Paragraph 14, SWRC shall input those results into the most current version of the AERMOD model, using the same meteorological data used in the AERMOD modeling referenced in Paragraph 12. If running the AERMOD model with the stack test results indicates that the National Ambient Air Quality Standard (NAAQS) for PM₁₀ or PM_{2.5} may be exceeded, SWRC shall shut down the FCCU immediately and it shall remain shut down until the ESP is on-line and operating at its optimal level.

If running the AERMOD model with the stack test results indicates that the concentration of PM in the ambient air may exceed 80% of the NAAQS for PM₁₀ or PM_{2.5}, SWRC shall adjust the throughput and air rate of the FCCU sufficiently to ensure that the concentration of PM in the ambient air will not exceed 80% of the NAAQS for PM₁₀ and PM_{2.5}. If adjustments to the throughput and/or air rate do not ensure that the concentration of PM in the ambient air will not exceed 80% of the NAAQS for PM₁₀ or PM_{2.5}, SWRC shall shut down the FCCU immediately and it shall remain shut down until the ESP is on-line and operating at its optimal level.

16. If SWRC is still operating the FCCU without the ESP 6 weeks after starting up the FCCU, SWRC shall repeat the stack testing and reporting described in Paragraph 14 and the modeling described in Paragraph 15. The same conditions regarding shut down, and adjustment of throughput and air rate, set forth in Paragraph 15 shall apply to the results of this additional testing. In no event shall SWRC continue operation of the FCCU if the ESP is not on-line and operating in a way to ensure compliance with the Consent Decree, NSPS and NESHAPS limits within 8 weeks after starting up the FCCU.

VI. STIPULATED PENALTIES

17. For failure by SWRC to comply with the terms of this Order, SWRC shall pay stipulated penalties to the United States upon demand for each failure as provided herein.

18. For failure by SWRC to comply with the PM emission limits applicable to the Sinclair Wyoming Refinery identified in Paragraphs 5 and 6 of this Order, Three Thousand Dollars (\$3,000) for each calendar day on which the Sinclair Wyoming Refinery exceeds any applicable limit, provided, however, that beginning on the 61st calendar day in which a PM emission limit is

exceeded, the penalty shall increase to Five Thousand Dollars (\$5,000) for each calendar day on which the Sinclair Wyoming Refinery exceeds an applicable PM emission limit.

19. For failure to: (1) conduct stack testing in a timely manner or otherwise in accordance with the specifications set forth in Paragraph 14; or (2) run the AERMOD model as required pursuant to Paragraphs 15, \$10,000 per day of noncompliance for each instance of noncompliance.

20. For failure to submit the results of modeling in accordance with the requirements of Paragraph 15 and, if applicable, Paragraph 16, \$10,000 per day of noncompliance for each instance of noncompliance.

21. For failure to shut down or curtail the operations of the FCCU in accordance with the requirements of Paragraph 15 and, if applicable, Paragraph 16, \$37,500 per day of noncompliance for each instance of noncompliance.

22. For failure to comply with any other requirement of this Order:

<u>Period of Noncompliance</u>	<u>Penalty Per Day</u>
1 st through 30 th day after deadline	\$2,000
31 st through 60 th day after deadline	\$3,000
Beyond 60 th day after deadline	\$5,000

23. SWRC shall pay stipulated penalties upon written demand by EPA by no later than thirty (30) calendar days after SWRC receives such demand. A demand for the payment of stipulated penalties will identify the particular violation(s) to which the stipulated penalty relates, the stipulated penalty amount that EPA is demanding for each violation (as can be best estimated), the calculation method underlying the demand, and the grounds upon which the demand is based. The United

States may, in its unreviewable discretion, waive payment of any portion of stipulated penalties that may accrue under this Order.

24. Payment of Stipulated Penalties. Payment of stipulated penalties shall be made by any of the methods set forth in Appendix 1 to this Order.

25. Stipulated Penalties Dispute. Stipulated penalties will begin to accrue on the day after performance is due or the day a violation occurs, whichever is applicable, and will continue to accrue until performance is satisfactorily completed or until the violation ceases. However, in the event of a dispute over stipulated penalties, stipulated penalties will not accrue commencing upon the date that SWRC files a petition with the Assistant Regional Administrator of EPA Region 8's Office of Enforcement, Compliance and Environmental Justice (ARA for ECEJ) if SWRC has placed the disputed amount demanded in a commercial escrow account with interest. If the dispute thereafter is resolved in SWRC's favor, the escrowed amount plus accrued interest will be returned to SWRC; otherwise, EPA will be entitled to the amount that was determined to be due by the ARA for ECEJ, plus the interest that has accrued in the escrow account on such amount.

26. If SWRC disagrees with the assessment, or the amount of assessment, of a stipulated penalty pursuant to this Order, it may notify EPA of such dispute by providing, within thirty (30) calendar days of receipt of EPA's written stipulated penalty demand, a written statement describing the nature of the dispute, and stating in detail SWRC's position with regard to such dispute.

27. If SWRC provides a written statement to EPA pursuant to Paragraph 26 of this Order, the dispute will, in the first instance, be the subject of informal negotiations between the Parties. Such period of informal negotiations will not extend beyond sixty (60) calendar days from the date of the

first meeting between representatives of the Parties, unless the Parties agree in writing that this period should be extended.

28. If SWRC is dissatisfied with the outcome of informal negotiations, it may, within twenty-one (21) calendar days after the end of the informal negotiation period in Paragraph 27 of this Order, elevate its dispute by submitting a written statement describing the nature of the dispute, and stating in detail SWRC's position with regard to such dispute to the ARA for ECEJ. EPA staff may submit its own written statement to the ARA for ECEJ, and will notify the ARA for ECEJ within seven (7) days after SWRC submits its written notice if it intends to do so, in which case, EPA staff will have twenty-one (21) calendar days from the date of such notification to submit its written statement. SWRC and EPA shall copy each other with any written statements submitted pursuant to this Paragraph.

29. The ARA for ECEJ will review the written statement(s) provided by SWRC and, if applicable, EPA staff, and render a decision on the dispute. The decision of the ARA for ECEJ is final and not appealable. As part of the resolution of any dispute of stipulated penalties submitted to dispute resolution, the Parties, by agreement, or the ARA for ECEJ, in his decision, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Order to account for the delay in the work that occurred as a result of dispute resolution. SWRC shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule, and any failure to comply with such extended or modified schedule shall not be subject to further dispute resolution.

30. SWRC will be liable for interest on any unpaid balance of stipulated penalties to be paid in accordance with Section VI. All such interest will accrue at the rate established pursuant to 28

U.S.C. § 1961(a) --i.e., a rate equal to the coupon issue yield equivalent (as determined by the Secretary of Treasury) of the average accepted auction price for the last auction of 52-week U.S. Treasury bills settled prior to the effective date of the Order. Interest will be computed daily and compounded annually. Interest will be calculated from the date payment is due under the Order through the date of actual payment. For purposes of this Paragraph, interest pursuant to this Paragraph will cease to accrue on the amount of any stipulated penalty payment made into an interest bearing escrow account as contemplated by Paragraph 26 of the Order. Monies timely paid into escrow will not be considered to be an unpaid balance under this Section VI.

31. All written notices and statements relating to the stipulated penalty provisions, including those pertaining to dispute resolution, shall be furnished to:

To EPA:

Air Program Director
c/o Scott Whitmore (8ENF-AT)
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
(303) 312-6317
whitmore.scott@epa.gov

and

Sheldon H. Muller (8ENF-L)
Senior Enforcement Attorney
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
(303) 312-6916
muller.sheldon@epa.gov

To SWRC:

Lynn Hart, Esq.
Vice President and General Counsel
Sinclair Oil Corporation
550 East South Temple
Salt Lake City, UT 84102-1005
(801) 524-2756
lhart@sinclairoil.com

VII. GENERAL PROVISIONS

32. Compliance with the terms and conditions of this Order shall not be construed to relieve SWRC of its obligation to comply with any applicable federal, state, or local law or regulation, and the requirements of the Consent Decree and all amendments thereto.

33. Notwithstanding the stipulated penalty provisions set forth in Section VI of this Order, nothing contained in this Order will be construed to prevent or limit the rights of EPA to seek or obtain other remedies or sanctions available under federal, state, regional or local statutes or regulations, by virtue of SWRC's violation of the Order or of the statutes and regulations upon which the Order is based, or for SWRC's violations of any applicable provision of law, provided, however, that EPA will not seek civil penalties where it already has demanded and secured stipulated penalties from SWRC for the same violations nor will EPA demand stipulated penalties from SWRC for a violation of this Order if EPA has commenced litigation under the Clean Air Act for the same violations.

34. All information and documents submitted by SWRC to EPA pursuant to this Order will be subject to public inspection in accordance with federal statutes and regulations, unless subject to legal privileges or protection or identified and supported as trade secrets or business confidential in accordance with federal statutes or regulations. EPA may use any information submitted pursuant to

or in conjunction with implementation of this Order in an administrative, civil, judicial, or criminal action.

35. Each undersigned representative of the parties certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to execute and legally bind such party to this document.

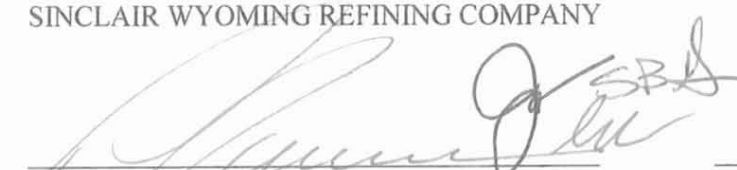
36. Each party agrees to pay its own costs and attorneys' fees in this action.

VIII. EFFECTIVE DATE

37. This Order shall be effective immediately upon signature by the ARA for ECEJ.

AGREED AS STATED ABOVE:

SINCLAIR WYOMING REFINING COMPANY




Peter M. Johnson
President, Sinclair Wyoming Refining Company

3.18.11

Date

AGREED AND SO ORDERED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

per 

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

3/18/2011

Date

Administrative Consent Order - Appendix 1

The following are acceptable payment methods for stipulated penalties required to be paid pursuant to the Order.

1. If payment is being made by cashier's or certified check, submit the check, including the name and docket number of this case, payable to "Treasurer, United States of America," to:

Regular Mail:

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

Federal Express, Airborne, or other commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

2. Wire Transfers:

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

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 "

3. ACH (also known as REX or remittance express):

ACH payments must indicate the name and docket number of this case and be paid in accordance with the following information:

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

4. On-line Payment:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

www.pay.gov

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.