

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

2011 JUL -7 PM 3:43

U.S. EPA - REGION IX
REGIONAL HEARING CLERK

Docket No.

IN THE MATTER OF:

Lunday-Thagard Company

Respondent.

CAA(112r)-09-2011-0005

CONSENT AGREEMENT
AND
FINAL ORDER PURSUANT TO
40 CFR §§ 22.13 and 22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 CFR Part 22, as revised by 64 Fed. Reg. 141 (July 23, 1999). Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Lunday-Thagard Company, a California corporation ("Respondent").

2. Respondent owns and operates a facility at 9302 Garfield Drive, South Gate, California ("Facility").

3. This Consent Agreement and Final Order Pursuant to 40 CFR Sections 22.13 and 22.18, ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent, at the Facility, violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the regulations adopted pursuant thereto.

B. GENERAL ALLEGATIONS

4. Respondent is a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

5. The real property and improvements thereto located at the 9302 Garfield Drive, South Gate, California is a “stationary source” as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).

6. Pursuant to Section 112(r) of the CAA, EPA established a “threshold quantity” (“TQ”) for each “regulated substance,” above which a facility shall be subject to the requirements of Section 112(r) of CAA. For substances designated as “regulated toxic substances” or “regulated flammable substances,” the TQs are specified at 40 CFR § 68.130.

7. Butane, isopentane, and pentane, which are constituents of the flammable mixture naphtha, have Chemical Abstract Service Registry (“CAS”) Numbers 106-97-8, 78-78-4, and 109-66-0, respectively. They are “regulated toxic substances” listed under CAA § 112(r)(3), each with a TQ of 10,000 pounds. 40 CFR § 68.130, Table 3.

8. At all times relevant to this CA/FO, the Facility produced, used or stored more than 10,000 pounds of the flammable mixture naphtha.

9. At all times relevant to this CA/FO, Respondent has been the owner and operator of the Facility.

10. Under Section 112(r)(7) of the CAA and 40 CFR § 68.12(a), the owner or operator of a covered stationary source must submit a Risk Management Plan (“RMP”), as provided in 40 CFR §§ 68.150 - 68.185.

11. Pursuant to 40 CFR § 68.10 and 40 CFR § 68.150(b), the owner or operator of a covered stationary source must comply with the requirements of 40 CFR Part 68 and submit its first RMP 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 § 68.130, or

(3) The date on which a regulated substance is first present above a TQ in a process.

12. The owner or operator of a covered stationary source must comply with the requirements to review and update the RMP and submit it to EPA every five years after initial submittal for a 5-year update pursuant to Section 112(r)(7) of the CAA and 40 CFR § 68.190(a).

13. Based on information supplied by Respondent, EPA alleges that Respondent has violated Section 112(r)(7) of CAA, 42 U.S.C. § 7412(r)(7), and 40 CFR Part 68. Respondent neither admits nor denies this allegation.

14. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413.

15. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes the assessment of a civil penalty for any violation of Section 112(r) of CAA, 42 U.S.C. § 7412(r).

16. The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA. Delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, has re-delegated this authority with respect to enforcement of Section 112(r)(1) and (7) of the CAA to the Director of the Superfund Division as well as the Director of the Air Division. Regional Order 1265.05A, dated August 14, 2003.

17. In a letter dated May 25, 2010, the Department of Justice granted EPA authority to commence this administrative enforcement action pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

C. ALLEGED VIOLATIONS

COUNT I

(Failure to Timely Submit an RMP)

18. Paragraphs 1 through 17 above are incorporated herein by this reference as if they were set forth here in their entirety.

19. The Facility had more than 10,000 lbs of naphtha, a flammable mixture containing butane, isopentane, and pentane, on June 21, 1999 and at all subsequent relevant times.
20. By June 21, 1999, Respondent was required to submit an RMP for the Facility.
21. Respondent did not submit an RMP for the Facility to EPA until on or about November 29, 2010.
22. Therefore, EPA alleges that Respondent failed to timely submit an RMP for the Facility, in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 CFR § 68.190(a).

D. CIVIL PENALTY

23. Section 113(d) of the CAA, as adjusted by the Debt Collection Improvement Act of 1996, *see* 40 CFR Part 19, authorizes a civil penalty of up to **THIRTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500)** per day for each day after March 15, 2004 a violation of Section 112(r) of the CAA and the implementing regulations continues through January 12, 2009, (See 69 Fed. Reg. 7121, 7126 (Feb. 13, 2004)), and up to **THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500)** for violations that occur after January 12, 2009. 69 Fed. Reg. 75340, 75346 (Dec. 11, 2008).
24. Based on the facts alleged herein and upon all the factors which the Complainant considers pursuant to the Combined Enforcement Policy for Section 112(r) of the Clean Air Act (“CEP”), dated August 10, 2001, including the nature, extent, and gravity of the violations, the Respondent’s ability to pay, prior history of violations, degree of culpability, any economic benefit, and such other matters as justice may require, the Complainant proposes that the Respondent be assessed, and Respondent agrees to pay **ONE HUNDRED TWENTY FOUR THOUSAND SIX HUNDRED DOLLARS (\$124,600.00)** as the civil penalty for the violations alleged herein. The proposed penalty was calculated in accordance with the CEP.

F. ADMISSIONS AND WAIVERS OF RIGHTS

25. Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent pursuant to Section 113 of the CAA, 42 U.S.C. § 7413, and 40 CFR Part 22. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

26. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to a hearing or an appeal on any issue relating to the factual allegations or legal conclusions set forth in the CA/FO, including without limitation a hearing pursuant to Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2), or judicial review pursuant to Section 113(d)(4) of the CAA, 42 U.S.C. § 7413(4). Respondent hereby consents to the terms of this CA/FO and the issuance of this CA/FO without adjudication.

27. Complainant and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

F. PARTIES BOUND

28. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns and upon all persons acting under or for Respondent, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section I) and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full and complete settlement of the violations alleged herein.

29. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

30. Until termination of this CA/FO, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

31. The undersigned representative of Respondent hereby certifies that he is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

G. CERTIFICATION OF COMPLIANCE

32. Upon signing this CA/FO, Respondent certifies to EPA that it has fully complied with the requirements of Section 112(r) of the CAA that formed the basis for the violations alleged in the CA/FO, and the Facility is now in compliance with Section 112(r) of the CAA.

33. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

H. PAYMENT OF CIVIL PENALTY

34. Respondent consents to the assessment of and agrees to pay a civil penalty of **ONE HUNDRED TWENTY FOUR THOUSAND SIX HUNDRED DOLLARS (\$124,600.00)** in settlement of the civil penalty claims made in this CA/FO.

35. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO, by sending a certified or cashier's check in the amount of **ONE HUNDRED TWENTY FOUR THOUSAND SIX HUNDRED DOLLARS (\$124,600.00)**, payable to U.S. EPA, which shall be sent to:

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

36. The check shall reference the name and docket number of the CA/FO, and shall be accompanied by a cover letter stating that payment is being made pursuant to this CA/FO. The cover letter and civil penalty shall be sent by certified mail, return receipt requested. Copies of the transmittals shall be sent to:

Michael Hingerty (ORC-3)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

37. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty so that it is received by the due date will result in imposition of interest from the effective date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 CFR §13.11. In addition, a twelve percent (12%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.

38. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

I. DELAY IN PERFORMANCE / STIPULATED PENALTIES

39. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall

include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

40. For failure to submit a payment to EPA by the time required in this CA/FO: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter.

41. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section H of this CA/FO.

42. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 CFR §13.11. Complainant reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with the CAA and its implementing regulations.

43. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

J. RESERVATION OF RIGHTS

44. EPA expressly reserves all rights and defenses that it may have.

45. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without

limitation, the assessment of penalties under the CAA or any other statutory, regulatory or common law enforcement authority of the United States. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under the CAA or any other statutory, regulatory or common law enforcement authority of the United States.

46. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with the CAA or any other applicable local, state or federal laws and regulations.

47. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO.

48. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States. Notwithstanding compliance with the terms of this CA/FO, Respondent is not released from liability, if any, for the costs of any response actions taken by EPA.

K. MISCELLANEOUS

49. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

50. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

51. Each party to this action shall bear its own costs and attorneys' fees.

52. Complainant and Respondent consent to entry of this CA/FO without further notice.

53. The Effective Date of this CA/FO is the date the Final Order is signed by EPA.


IT IS SO AGREED.

4-15-2011
Date



Lunday-Thagard Company

6-24-11
Date


For Jane Diamond, Director
Superfund Division


U.S. Environmental Protection Agency, Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (“CA/FO”) (Docket No. CAA (112r)-9-2011-00~~5~~⁷) be entered and that Respondent pay a civil penalty of **ONE HUNDRED TWENTY FOUR THOUSAND SIX HUNDRED DOLLARS (\$124,600.00)** payable to “Treasurer, United States of America,” in the manner and form specified in Section H of this CA/FO within thirty (30) days after the Effective Date, and complete any and all tasks required by this CA/FO.

THIS FINAL ORDER SHALL BE EFFECTIVE UPON FILING WITH THE HEARING CLERK.

07/06/11
Date


Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

Docket No. CAA(112r) 09-2011-00 *as*

I hereby certify that the original copy of the foregoing CAFO with the Docket numbers referenced above, has been filed with the Region 9 Hearing Clerk and that a copy was sent by certified mail, return receipt requested, to:

Peter Stockhausen
Vice President of Refining
Lunday-Thagard Company
9302 Garfield Avenue
South Gate, CA 90280-3805

7/7/11
Date

Bryan L. Gotsch

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco CA 94105



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

CERTIFIED MAIL NO.: 7000 1670 0009 3120 5603
RETURN RECEIPT REQUESTED

In Reply Refer to:
Lunday-Thagard Company, South Gate, CA

JUL 07 2011

Peter Stockhausen
Vice President of Refining
Lunday-Thagard Company
9302 Garfield Avenue
South Gate, CA 90280-3805

Re: In the Matter of Lunday-Thagard.


Dear Mr. Stockhausen

Enclosed is the fully executed Consent Agreement and Final Order (CA/FO) negotiated between the United States Environmental Protection Agency, Region IX (EPA), and Lunday-Thagard Company.

This CA/FO simultaneously commences and concludes the above-referenced proceeding concerning Lunday-Thagard's violations of the Clean Air Act ("CAA") Section 112(r)(7) Risk Management Program ("RMP") as alleged by EPA in the CA/FO.

Lunday-Thagard's prompt payment of the civil penalty assessed will close this case. If you have any questions regarding the CAA 112(r)(7) requirements governing operations at Lunday-Thagard or that concern the proceedings terminated by the enclosed documents, please contact Michael Hingerty at (415) 972-3927.

Sincerely,


for Jane Diamond
Director
Superfund Division

Enclosures