

FILED

2013 SEP 25 PM 2:57

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6 DALLAS, TEXAS

In the Matter of: §
§
Wynnewood Refining Company, LLC § EPA Docket No.
§ CAA-06-2013-3316
Respondent §
§

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency ("EPA"), Region 6 ("Complainant") and Wynnewood Refining Company, 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. PRELIMINARY STATEMENT

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

2. For purposes of this proceeding, Respondent admits the jurisdictional allegations contained herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. Solely for purposes of this settlement, Respondent explicitly 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 this CAFO.

4. Compliance with the terms and conditions of this CAFO shall resolve Respondent's civil liability to EPA for the violations which are alleged herein.

5. 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.

6. The agreements, statements, stipulations, findings and actions herein are made solely for the purpose of settling this matter economically and amicably without litigation and are not intended to be and will not be deemed admissible in any other future proceedings except proceedings under the Clean Air Act between these parties wherein this agreement shall have the full force and effect of a Final Order of EPA.

II. GENERAL ALLEGATIONS

7. Respondent is a corporation authorized to do business in the State of Oklahoma.

8. Respondent owns and operates the Wynnewood Refinery in Wynnewood, Oklahoma ("Facility").

9. Respondent is a "person" as that term is defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e).

10. The Facility is a "stationary source" as that term is defined by section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

11. Respondent is the "owner or operator" as those terms are defined by section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.

12. The Facility has ten covered process units each utilizing a threshold amount of a regulated substance pursuant to 42 U.S.C. § 7412(r) (7).

13. Requirements of 40 C.F.R. Part 68 apply to the Facility.

III. GENERAL DUTY ALLEGATIONS

14. The Respondent operated a Wickes Boiler at the Facility, which combusted natural gas or refinery fuel gas as fuel.

15. On September 28, 2012, natural gas was introduced into the Wickes Boiler during an attempted start-up. During the attempted startup, the natural gas combusted, which resulted in an unintended flash detonation that killed one worker immediately and led to the death of a second worker on October 18, 2012.

16. Pursuant to section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), an owner/operator of a stationary source producing, processing, handling or storing substances listed pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, has a general duty to: (1) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (2) design and maintain a safe facility, taking such steps as are necessary to prevent releases; and (3) minimize the consequences of accidental releases that do occur.

17. At the Facility, Respondent produces, processes, handles, or stores substances listed in, or pursuant to, CAA § 112(r)(3) or other extremely hazardous substances identified as such due to toxicity, reactivity, flammability, volatility, or corrosivity.

18. Respondent failed to identify hazards that may result from accidental releases.

19. Respondent failed to design and maintain a safe facility.

20. Respondent's two failures each constitute a violation of the general duty clause in section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

IV. RISK MANAGEMENT PROGRAM ALLEGATIONS

21. The April 6, 2011, risk management plan submittal lists Mr. Dan Looney, Safety & Security Manager, as the person responsible for Part 68 implementation.

22. The document titled Wynnewood Refining RMP Management System, provided by Wynnewood states that "The Vice President and General Manager Refining – Wynnewood maintains overall responsibility for the implementation of the risk management program."

23. The inconsistency between the two documents constitutes a violation of 40 C.F.R. § 68.15(b), which states that: "The owner or operator shall assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements."

24. The Respondent performed an audit, pursuant to 40 C.F.R. § 68.79, that was completed November 29, 2010.

25. Two of the audit (11/29/2010) findings, related to emergency response activities, remained unaddressed at the time of the inspection.

26. 40 C.F.R. § 68.79 requires that an "owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected."

27. At the time of the inspection, the Respondent had failed to determine and document an appropriate response to two of the audit findings for the compliance audit conducted in 2010.

28. Respondent is therefore subject to the assessment of penalties pursuant to sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), for at least one day of violation of the general duty clause of section 112(r)(7) of the CAA, 42 U.S.C. §7412(r)(7).

V. VIOLATIONS

29. Count 1 – Complainant alleges a violation of the General Duty Clause lasting at least one day for failing to identify hazards associated with the start-up of the Wickes Boiler.

30. Count 2 – Complainant alleges a violation of the General Duty Clause lasting at least one day for failing to design and maintain a safe facility.

31. Count 3 – Complainant alleges a violation of the Risk Management Program for failing to identify a single qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements.

32. Count 4 – Complainant alleges a violation of the Risk Management Program for failing to determine and document an appropriate response to two of the audit findings for the compliance audit conducted in 2010.

VI. TERMS OF SETTLEMENT

A. CIVIL PENALTY

33. Pursuant to the authority granted in sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and taking into consideration the size of the Respondent's business, the economic impact of the penalty on the Respondent's business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violations, payment by Respondent of penalties previously assessed for the same violation (if any), the economic benefit of noncompliance, and the seriousness of the violation, as well as other factors which justice may require, EPA and Respondent agree that an appropriate penalty to settle this matter is \$86,000 dollars.

34. Respondent shall pay the assessed penalty within thirty (30) days of the effective date of this CAFO. 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 three ways: regular U.S. Postal mail (including certified mail), or U.S. Postal Service express mail, the check 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), the check should be remitted to :

U.S. Bank Government
Lockbox 979077
US EPA Fines and 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 No. 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"

PLEASE NOTE: Docket number CAA-06-2013-3316 shall be clearly typed on the check 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 the docket number of this CAFO. If payment is made by wire service, the wire transfer instructions shall reference the Respondent's name and address, the case name, and the docket number of this 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:

Chief, Surveillance Section (6EN-AS)
Compliance Assurance and Enforcement Division
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

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 these instructions will ensure that proper credit is given when penalties are received in the Region.

representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. RETENTION OF ENFORCEMENT RIGHTS

39. 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.

40. 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 C.F.R. Part 68.

41. 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, or contaminants 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.

In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to the claims that have been specifically resolved pursuant to this CAFO.

D. COSTS

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

E. EFFECTIVE DATE

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

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

FOR THE RESPONDENT:

9/23/13

Date

CG Swarby

FOR THE COMPLAINANT:

9/25/13

Date

John Blevins

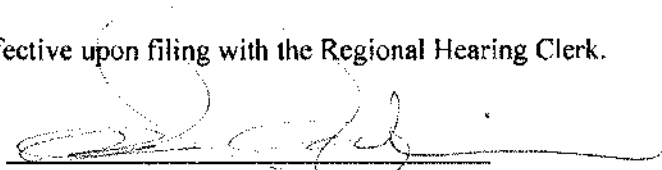
John Blevins
Director
Compliance Assurance and Enforcement
Division

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 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. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date:

9/25/13


Patrick Rankin
Regional Judicial Officer

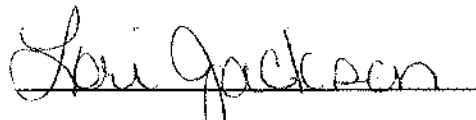
CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order (CAFO) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was placed in the United States Mail, to the following by the method indicated:

LeAnn Johnson Koch
Perkins Coie, LLP
700 Thirteenth Street N.W.
Washington, D.C. 20005-3960

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: #7005 1820 0003 7458 7562

Date: 9-25-2013


U.S. EPA, Region 6
Dallas, Texas