



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 29 2016

REPLY TO THE ATTENTION OF:

Robert Brager
Beveridge & Diamond
201 North Charles Street
Suite 2210
Baltimore, Maryland 21201

Dear Mr. Brager:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO), which resolve case docket no. CAA-05-2016-0019. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on March 29, 2016.

Pursuant to paragraph 52 of the CAFO, Sunoco, Inc. (Sunoco) must pay the civil penalty within 30 days of April 28, 2016. Sunoco's payment must include the docket number, CAA-05-2016-0019.

Please direct any questions regarding this case to Mary McAuliffe, Associate Regional Counsel, (312) 886-6237.

Sincerely,

Charles Hill for Brian Dickens

Brian Dickens,
Chief
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

cc: Ann Coyle, Regional Judicial Officer /C-14J
Regional Hearing Clerk/E-19J
Mary McAuliffe/C-14J
Robert Hodanbosi, Ohio Environmental Protection Agency
Karen Granata, Toledo Department of Environmental Services

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Sunoco, Inc.
Oregon, Ohio,

Respondent.



) Docket No. CAA-05-2016-0019

) Proceeding to Assess a Civil Penalty
) Under Section 113(d) of the Clean Air Act,
) 42 U.S.C. § 7413(d)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Sunoco, Inc. (Sunoco), a corporation that did business in the State of Ohio during the period of time relevant to this Order.

4. Where the parties agree to settle one or more causes of action before the filing of a Complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a Complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO but neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided in 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. On January 2, 2013, EPA issued a Finding of Violation (FOV), amended February 1, 2013, to Toledo Refining Company (TRC), the current owner and operator of a petroleum refinery (“the Refinery”) located in Oregon, Ohio. Sunoco owned and operated the Refinery for the time frame at issue in this CAFO and sold the Refinery to TRC on March 1, 2011. In satisfaction of the notice requirements of Section 113(a) of the CAA, on September 30, 2013, EPA issued a Notice and Finding of Violation (NOV/FOV) to TRC. EPA provided a copy of both the FOV and the NOV/FOV to the Ohio Environmental Protection Agency. TRC provided the FOV and the NOV/FOV to Respondent. The FOV and the NOV/FOV allege that Respondent committed the alleged violations described in Paragraphs 48 - 50 of this Agreement and provided Respondent an opportunity to confer with EPA. On February 26, 2013 representatives of Respondent, TRC, and EPA discussed the February 1, 2013 FOV. On February 13, 2014, representatives of Respondent, TRC and EPA discussed the September 30, 2013 NOV/FOV.

10. Section 113(d)(1) limits the Administrator’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

11. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Statutory and Regulatory Background

New Source Performance Standards

12. EPA promulgated the General Provisions to the New Source Performance Standards (NSPS Subpart A) on December 23, 1971. *See* 36 Fed. Reg. 24876. NSPS Subpart A is codified at 40 C.F.R. §§ 60.1- 60.19.

13. Under NSPS Subpart A, the provisions of 40 C.F.R. Part 60 “apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the publication [in Part 60] of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.” 40 C.F.R. § 60.1.

14. “Affected facility” is defined as “any apparatus to which a standard is applicable.” 40 C.F.R. § 60.2.

15. 40 C.F.R. § 60.11(d) requires that “at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.”

16. 40 C.F.R. § 60.18(d) provides that “owners or operators of flares used to comply with the provisions of this subpart shall monitor these control devices to ensure that they are operated and maintained in conformance with their designs...”

17. 40 C.F.R. Part 60, Subparts VV and GGG require owners and operators of affected facilities to monitor their control devices to ensure that they are operated and maintained in conformance with their designs. *See* 40 C.F.R. §§ 60.18(d), 60.82-10(d), 60.482-10(e), and 60.592(a).

Maximum Achievable Control Technology (MACT) for Flaring

18. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, as it existed after the 1990 CAA Amendments, EPA promulgated regulations that contain general provisions applicable to sources that are subject to the MACT standards of Part 63 of Title 40 of the Code of Federal Regulations. 40 C.F.R. Part 63, Subpart A, §§ 63.1–63.16 (MACT Subpart A).

19. Under MACT Subpart A, each relevant standard in Part 63 must identify explicitly whether each provision in MACT Subpart A is or is not included in such relevant standard. 40 C.F.R. § 63.1(a)(4)(i).

20. Within MACT Subpart A, EPA promulgated specific regulations that apply whenever flares are used as control devices. 40 C.F.R. § 63.11(b).

21. MACT Subpart A requires that “at all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.” 40 C.F.R. § 63.6(e)(1)(i).

22. 40 C.F.R. Part 63, Subpart CC requires owners and operators of affected facilities to comply with 40 C.F.R. § 63.6(e) as well as NSPS Subpart VV. *See* 40 C.F.R. § 63.648(a) and Subpart CC Appendix, Table 6.

23. 40 C.F.R. Part 63, Subpart H requires owners and operators to monitor their control devices to ensure that they are operated and maintained in conformance with their design. See 40 C.F.R. § 63.172(d) and (e).

24. 40 C.F.R. § 63.172(d) provides that “[f]lares used to comply with this subpart shall comply with the requirements of § 63.11(b) of subpart A of this part.”

25. 40 C.F.R. § 63.172(e) provides that “[o]wners or operators of control devices that are used to comply with the provisions of this subpart shall monitor these control devices to ensure that they are operated and maintained in conformance with their design.”

NESHAP for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (MACT Subpart UUU)

26. 40 C.F.R. Part 63, Subpart UUU requires the owner and operator of a petroleum refinery subject to MACT Subpart UUU to submit certain reports. 40 C.F.R. § 63.1575(a).

27. MACT Subpart UUU, at 40 C.F.R. § 63.1575(d), provides, in part, that, “[f]or each deviation from an emission limitation and for each deviation from the requirements for work practice standards that occurs at an affected source where you are not using a . . . [CEMS] to comply with the emission limitation or work practice standard in this subpart, the compliance report must contain . . . [t]he total operating time of each affected source during the reporting period . . . [i]nformation on the number, duration, and cause for monitor downtime incidents (including unknown cause, if applicable, other than downtime associated with zero and span and other daily calibration checks).”

28. MACT Subpart UUU, at 40 C.F.R. § 63.1575(e), provides that, for each deviation from an emission limitation occurring at an affected source that uses a CEMS to comply with the emission limitation, the compliance report must contain:

- 1) The date and time that each malfunction started and stopped.

- 2) The date and time that each . . . [CEMS] was inoperative, except for zero (low-level) and high-level checks.
- 3) The date and time that each . . . [CEMS] was out-of-control, including the information in § 63.8(c)(8).
- 4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.
- 5) A summary of the total duration of the deviation during the reporting period (recorded in minutes for opacity and hours for gases and in the averaging period specified in the regulation for other types of emission limitations), and the total duration as a percent of the total source operating time during that reporting period.
- 6) A breakdown of the total duration of the deviations during the reporting period and into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.
- 7) A summary of the total duration of downtime for the . . . [CEMS] during the reporting period (recorded in minutes for opacity and hours for gases and in the averaging time specified in the regulation for other types of standards), and the total duration of downtime for the . . . [CEMS] as a percent of the total source operating time during that reporting period.
- 8) A breakdown of the total duration of downtime for the . . . [CEMS] during the reporting period into periods that are due to monitoring equipment malfunctions, non-monitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and other unknown causes.
- 9) An identification of each HAP that was monitored at the affected source.
- 10) A brief description of the process units.
- 11) The monitoring equipment manufacturer(s) and model number(s).
- 12) The date of the latest certification or audit for the . . . [CEMS].
- 13) A description of any change in the . . . [CEMS], processes, or controls since the last reporting period.

29. MACT Subpart UUU, at 40 C.F.R. § 63.1575(f), provides, in part, that each compliance report must include “[a] copy of any performance test done during the reporting period on any affected unit . . . [.]”

Title V

30. Title V of the Clean Air Act, 42 U.S.C. §§ 7661–7661f, establishes an operating permit program for certain sources. 42 U.S.C. § 7661a(a).

31. Section 502(a) of the CAA (42 U.S.C. § 7661a(a)), the implementing regulations at 40 C.F.R. §§ 70.1(b) and 70.7(b), and the Title V permit program and regulations of Ohio provide that, after the effective date of the state Title V permit program, no source subject to Title V may operate except in compliance with a Title V permit.

32. EPA fully approved the Ohio Title V Permit program, effective October 1, 1995. *See* 60 Fed. Reg. 42045 (August 15, 1995). Ohio's Title V Permit program requirements are codified at Ohio Administrative Code 3745-77.

33. OAC Rule 3745-77-02 provides that "the owner or operator of a Title V source shall not operate such source after the date that a timely and complete Title V permit application is required to be submitted under this chapter, except in compliance with a permit issued under this chapter."

34. The Ohio Environmental Protection Agency (Ohio EPA) issued a Title V Permit to the facility on January 22, 2004, effective February 12, 2004¹ (the Title V Permit).

35. The Title V Permit identifies the Plant 4 Flare as Emission Unit P009 and the Plant 9 Flare as P008.

36. Part III of the Title V Permit has a section that identifies applicable requirements for P008. This section identifies P008 as being subject to MACT Subparts A, H and CC and NSPS Subpart A. It further states that "a. The permittee shall comply with the flare requirements found in 40 CFR Part 63.11... b. ...Flares used to comply with 40 CFR Part 63, Subpart H shall comply with the requirements of 40 CFR [§] 63.11(b) ...c. Pursuant to 40 CFR Part 63.160(b)(2), because this flare is a control device for an emissions unit that is subject to 40 CFR

¹ The Title V permit was reissued on July 16, 2012, after the Refinery had been sold to TRC.

Part 63, Subpart H, the flare will be required to comply only with the provisions of 40 CFR Part 63, Subpart H.”

37. Part III of the Title V Permit has a section that identifies applicable requirements for P009. This section identifies P009 as being subject to MACT Subparts A and CC and NSPS Subparts A and GGG. It further states that “a. The permittee shall comply with the flare requirements found in 40 CFR Part 63.11... c. Pursuant to 40 CFR Part 63.641(p), because this flare is a control device for an emissions unit that is subject to 40 CFR Part 60, Subpart A, Subpart VV and Subpart GGG, the flare will be required to comply only with the provisions of 40 CFR Part 63, Subpart CC.”

Factual Allegations

38. Sunoco, Inc., a Pennsylvania corporation, is headquartered at 3801 West Chester Pike, Newtown Square, Pennsylvania 19073.

39. Sunoco is a “person” as defined by Section 302(e) of the Act. 42 U.S.C. § 7602(e).

40. Until March 1, 2011, Sunoco owned and operated a petroleum refinery located at 1819 Woodville Road, Oregon, Lucas County, Ohio (the Refinery).

41. The Refinery, during Sunoco’s ownership and operation, had an FCCU, two catalytic reformers and a sulfur recovery plant. It also included, among other control equipment, two flares, known as the Plant 4 Flare (P009) and the Plant 9 Flare (P008). The flares are used to control process waste gas streams from process units and equipment leaks from pressure relief valves. The flares are steam-assisted, which means that steam is added to the waste, or vent gas stream, to enhance combustion and to prevent the formation of smoke.

Flare Air Pollution Control Practices

42. The Refinery's Plant 4 Flare Instruction Manual provides that, "[i]f the steam valves are oversized or not set up to be proportional to waste gas flow then improper steam flow for smokeless operation will result in smoke, noise or incomplete combustion (white or gray smoke)."

43. The Refinery's Plant 9 Flare Operating and Maintenance Manual provides that, "during a flaring event, the steam flow to the Shepherd and Lower Steam Rings should be adjusted to the point where smoke is not visible and the flame is a yellow-orange color. Excessive steam injection will cause high noise and can cause deterioration of destruction efficiency."

44. Prior to March 1, 2011, Respondent operated Plant 4 Flare in a manner that is inconsistent with good air pollution control practice for minimizing emissions and not in conformance with its design.

45. Prior to March 1, 2011, Respondent operated Plant 9 Flare in a manner that is inconsistent with good air pollution control practice for minimizing emissions and not in conformance with its design.

Reporting

46. Sunoco submitted semi-annual compliance reports for MACT Subpart UUU on April 15, 2010, July 26, 2010, and January 24, 2011.

47. The MACT Subpart UUU semi-annual compliance reports submitted by Sunoco failed to include all of the information required by 40 C.F.R. § 63.1575(d)-(f).

Alleged Violations

48. EPA alleges that prior to March 1, 2011, Respondent failed to operate its flares in conformance with its design, in violation of 40 C.F.R. §§ 60.18(d), 60.482-10(e), 63.11(b), and 63.172(e), Section C.12(b)(2)(1) of Title V Permit number P0104231, and OAC Rule 3745-77-02.

49. EPA alleges that prior to March 1, 2011, Respondent failed to operate its flares in a manner consistent with good engineering practices to minimize emissions, in violation of 40 C.F.R. §§ 60.11(d) and 63.6(e)(1)(i), Sections C.12(b)(2)(1) and C.12(c)(3) of Title V Permit number P0104231, and OAC Rule 3745-77-02.

50. EPA alleges that prior to March 1, 2011, Respondent failed to submit complete semi-annual compliance reports under MACT Subpart UUU, in violation of 40 C.F.R. § 63.1575(d)-(f).

Civil Penalty

51. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and any other factor such as cooperation, prompt return to compliance, agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$31,500.

52. Within 30 days after the effective date of this CAFO, Respondent must pay a \$31,500 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

53. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

William Wagner (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

54. This civil penalty is not deductible for federal tax purposes.

55. If Respondent does not pay timely the civil penalty or any stipulated penalties due under Paragraph 65, below, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

56. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This

nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

Supplemental Environmental Project

57. Respondent must complete a supplemental environmental project (SEP) designed to protect families by abating lead-based paint hazards in a number of child-occupied facilities as defined at 40 C.F.R. § 745.83, or residential properties in or about the Oregon, Ohio area, as further described below. This SEP may include, but is not limited to, window replacement, the removal of lead-based paint and dust, the permanent enclosure or encapsulation of lead-based paint, and the replacement of lead-based painted surfaces or fixtures. The focus of the SEP will be lead abatement at low-income residences or child-occupied facilities where children age six and under or pregnant women reside or regularly visit, and whose occupants are unable to afford the costs of such work.

58. Respondent must complete the SEP as follows: the Respondent will contract with a local not-for-profit organization (NFP) experienced in lead abatement work to promptly undertake and complete such work in or about the Oregon, Ohio area. Respondent has tentatively selected the Greater Cincinnati Energy Alliance, which is acceptable to EPA. The foregoing statement shall not be construed to prohibit Respondent from selecting a different NFP. Respondent shall require the NFP to conduct the SEP according to all applicable federal and state work practice and notification requirements including, but not limited to, the United States Department of Housing and Urban Development's Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing and the State of Ohio, unless otherwise specifically provided in this CAFO. Respondent must fully fund an escrow account to pay for the lead abatement SEP not later than 90 days after the effective date of this CAFO. Respondent must spend at least \$118,000 for the lead abatement SEP. Respondent shall complete the SEP by

January 31, 2018, provided that this date may be extended by mutual agreement of the Respondent and EPA in writing.

59. SEP Certifications:

- a. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement or as injunctive relief as of the date it signs this CAFO.
- b. Respondent certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.
- c. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP.
- d. Respondent certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired. The parties agree that the NFP certifying to the lack of another federal financial assistance transaction shall satisfy Respondent's obligation for reasonable inquiry under this subparagraph.

60. Respondent must submit a SEP completion report to EPA no later than 60 days after Respondent receives a report from the NFP that the SEP is complete. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any problems implementing the SEP and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;

- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible). Include the number of properties from which lead was removed under the SEP.

61. Respondent must submit the SEP Completion Report by first class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in Paragraph 53, above, with a copy to mcauliffe.mary@epa.gov.

62. In the SEP Completion Report, Respondent must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

In certifying the report, the signatory may rely on documentation, assertions or other information provided by the NFP.

63. Within 90 days following receipt of the SEP completion report described in Paragraph 60, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and that EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under Paragraph 65.

64. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 30 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will

comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under Paragraph 65, below.

65. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows: If Respondent fails to implement the SEP, or halts or abandons work on the SEP, Respondent shall pay a stipulated penalty to EPA equal to \$25,000 plus the difference between \$118,000 and the amount expended in satisfactory performance of the SEP as demonstrated in certified cost reports. The penalty under this Paragraph shall apply as of the date specified for completing the SEP or the date performance ceases, whichever is earlier.

66. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

67. Respondent must pay any stipulated penalties within 30 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in Paragraph 52, above, and will pay interest and nonpayment penalties on any overdue amounts.

68. Any public statement that Respondent makes referring to the SEP must include the following language: "Sunoco, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Sunoco, Inc. for violations of the Clean Air Act." Respondent's contractual agreement with the NFP shall not be considered such a public statement.

69. Force Majeure: If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this Paragraph, Respondent may not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps. Need dispute resolution provision.

70. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

71. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: r5airenforcement@epa.gov (for Complainant), and timothy.kocis@sunoco.com with a copy to kevin.dunleavy@sunoco.com and RBrager@bdlaw.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

72. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

73. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

74. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in Paragraph 72, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

75. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

76. The terms of this CAFO bind Respondent, its successors and assigns.

77. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

78. Each party agrees to bear its own costs and attorneys fees in this action.

79. This CAFO constitutes the entire agreement between the parties.

Sunoco, Inc., Respondent

Date

2.26.16

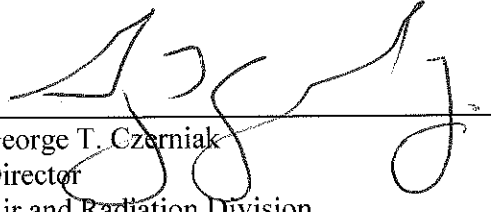


Cynthia Archer
EVP and Chief Marketing Officer

**Consent Agreement and Final Order
In the Matter of: Sunoco, Inc.**

United States Environmental Protection Agency, Complainant

3/22/16
Date

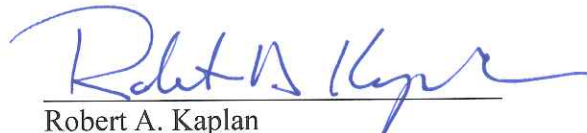

George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Sunoco, Inc.
Docket No. CAA-05-2016-0019

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

3/25/14
Date


Robert A. Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the matter of: Sunoco, Inc.
Docket Number: CAA-05-2016-0019

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on March 29, 2016, in the following manner to the addressees:

Copy by E-mail to
Respondent:

Robert Brager
RBrager@bdlaw.com
timothy.kocis@sunoco.com
kevin.dunleavy@sunoco.com

Copy by E-mail to
Complainant:

wagner.william@epa.gov
mcauliffe.mary@epa.gov
r5airenforcement@epa.gov

Copy by E-mail to
Regional Judicial Officer:

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Dated:

March 29, 2016 

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5