



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
JUN - 4 2014

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Virginia M. King, Esq.
Assistant General Counsel – Environmental, Safety and Security
Marathon Pipe Line LLC
539 South Main St.
Findlay, Ohio 45840-3229

Re: **Marathon Pipe Line LLC, (Woodhaven Cavern Facility), Woodhaven, Michigan**
Consent Agreement and Final Order
Docket No. CAA-05-2014-0032

Dear Ms. King,

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on June 4, 2014. Please inform your client of their obligation to pay a civil penalty in the amount of \$23,200 in the manner prescribed in paragraphs 36-41 and please note that your client must reference their check with the docket number.

Please feel free to contact Monika Chrzaszcz at (312) 886-0181 if you have any questions regarding the enclosed documents. Please direct any legal questions to Terence Stanuch, Regional Counsel, at (312) 866-8044. Thank you for your assistance in resolving this matter.

Sincerely yours,

Michael E. Hans, Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

cc. Terence Stanuch, ORC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)

CAA-05-2014-0032

Marathon Pipe Line LLC)
Findlay, Ohio)

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

Woodhaven Cavern Facility)
Woodhaven, Michigan)

Respondent.)
_____)

Docket No.



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 Act), 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, for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the implementing regulations.

2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. Respondent is Marathon Pipe Line LLC (Respondent), an Ohio corporation doing business in the State of Michigan.

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. In order to resolve this matter without litigation, Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

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

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

Statutory and Regulatory Background

9. Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), or any other extremely hazardous substance.

10. Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

11. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include

monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

12. Section 112(r)(7)(B)(i) of the Act, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

13. Section 112(r)(7)(B)(ii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a Risk Management Plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

14. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which have since been codified, as amended, at 40 C.F.R. § 68.130.

15. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 Fed. Reg. 31668 (June 20, 1996), which were codified, and amended, at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (Risk Management Program Regulations).

16. Under 40 C.F.R. § 68.3, “stationary source” is defined to mean “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.”

17. Under 40 C.F.R. § 68.3, “process” is defined to mean “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.”

18. The Risk Management Program Regulations, at Tables 3 and 4 referenced in 40 C.F.R. § 68.130, list ethyl mercaptan (CAS#75-08-1), propane (CAS# 74-98-6), butane (CAS # 106-97-8), pentane (CAS# 109-66-0), methane (CAS# 74-82-8), ethane (CAS# 74-84-0), propylene (CAS# 115-07-1), isobutane (CAS# 75-28-5), and isopentane (CAS# 78-78-4) as regulated flammable substances with threshold quantities of 10,000 lbs. Under 40 C.F.R. § 68.115(b)(2), a regulated flammable substance is subject to Risk Management Program regulations, at 40 C.F.R. Part 68, if it is present in a mixture and the concentration of the substance is in excess of one percent of the total mixture and maintained in quantities in excess of 10,000 pounds.

19. 40 C.F.R. § 68.115 provides that a “threshold quantity of a regulated substance listed in 40 C.F.R. § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.”

20. 40 C.F.R. § 68.12 requires that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single RMP, as provided in 40 C.F.R. §§ 68.150 through 68.185.

21. 40 C.F.R. § 68.12(d) requires that, in addition to meeting the general requirements of 40 C.F.R. § 68.12(a), the owner or operator of a stationary source with a process subject to Program 3 shall meet additional requirements identified at 40 C.F.R. § 68.12(d).

22. Section 113(d) of the Act 42 U.S.C. § 7413(d) and 40 C.F.R. Part 19 provide that the Administrator of the U.S. EPA may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for each violation of Section 112(r) of the Act that occurred from March 15, 2004 to January 12, 2009, and a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for each violation of Section 112(r) of the Act that occurred after January 12, 2009.

23. Section 113(d)(1) of the Act 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.

24. 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 complaint.

Factual Allegations and Alleged Violations

25. Respondent is a "person," as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

26. Respondent owns and operates a liquefied petroleum gas storage facility located at 24400 Allen Road, Woodhaven, Michigan, which consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites,

and which are owned or operated by the same person (the Woodhaven Facility).

27. On September 24, 2004, under Section 112(r) of the Act, 42 U.S.C. § 7412, and implementing regulations at 40 C.F.R. Part 68, Respondent submitted to U.S. EPA an RMP for the Woodhaven Facility.

28. According to the RMP submitted to U.S. EPA by Respondent, the Woodhaven Facility:

- a. fell within NAICS Code 48699, as “all other pipeline transportation”;
- b. used ethyl mercaptan and other flammable mixtures as process chemicals during its operations; and
- c. held at least 10,000 lbs. of ethyl mercaptan and other flammable mixtures.

29. The Woodhaven Facility is a “stationary source,” as defined at 40 C.F.R. § 68.3.

30. On September 24, 2004, having held for use in its operations at the Woodhaven Facility 10,000 lbs. or more of ethyl mercaptan and other flammable mixtures, Respondent exceeded the applicability threshold established by 40 C.F.R. § 68.130, and became subject to 40 C.F.R. Part 68.

31. For purposes of compliance with 40 C.F.R. Part 68 in its RMP, Respondent has acknowledged that it was required to meet Program 3 eligibility requirements at the Woodhaven Facility.

32. On March 21, 2011, authorized representatives of U.S. EPA conducted an inspection at the Woodhaven Facility to determine its compliance with 40 C.F.R. Part 68.

33. Based on the inspection conducted on March 21, 2011 and a review of additional information received by U.S. EPA subsequent to that date, U.S. EPA identified the following alleged violations by Respondent of the Risk Management Program Regulations:

- a. Failure to report in the RMP additional worst-case release scenarios for a hazard class if the worst-case release scenario from another covered process at the stationary source potentially affects public receptors different from those potentially affected by the worst-case release scenario developed under 40 C.F.R. § 68.25(a)(2)(ii), as required under 40 C.F.R. § 68.25(a)(2)(iii);
- b. Failure to have process safety information contain the relief system design and design basis, as required under 40 C.F.R. § 68.65(d)(1)(iv);
- c. Failure to establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when actions are to be completed; and communicate these actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations, as required under 40 C.F.R. § 68.67(e);
- d. Failure to certify annually that its operating procedures are current and accurate and that procedures have been reviewed as often as necessary, as required under 40 C.F.R. § 68.69(c);
- e. Failure to ensure that the frequency of inspections and test of process equipment is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience, as required under 40 C.F.R. § 68.73(d)(3);
- f. Failure to document each inspection and test that had been performed on its process equipment, including identifying the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test, as required under 40 C.F.R. § 68.73(d)(4);
- g. Failure to correct deficiencies in equipment that was outside acceptable limits defined by the process safety information before further use, or in a safe and timely manner, when necessary means were taken to assure safe operation, as required under 40 C.F.R. § 68.73(e);
- h. Failure to initiate incident investigations not later than 48 hours following the incident, as required under 40 C.F.R. § 68.81(b); and
- i. Failure to include the date the incident investigations began in its report, as required under 40 C.F.R. § 68.81(d)(2).

34. Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

35. Accordingly, the above-described alleged violations of 40 C.F.R. Part 68 and Section 112(r) of the Act, if proven, would be subject to the assessment of a civil penalties under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Civil Penalty

36. Based on an analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and other factors such as cooperation and prompt compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$23,200.

37. Within 30 days after the effective date of this CAFO, Respondent agrees to pay the \$23,200 civil penalty by directing a wire transfer to:

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"

38. Respondent also agrees to send a letter stating Respondent's name, address, the case docket number of this case, and evidence of the wire transfer to:

Attn: Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Monika Chrzaszcz (SC-5J)
Chemical Emergency Preparedness and Prevention Section
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Terence Stanuch (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

40. If Respondent does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

41. Pursuant to 31 C.F.R. § 901.9, 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. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). 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.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

42. Respondent has already contributed \$87,000 to the Woodhaven Fire Department, as a supplemental environmental project (SEP) designed to protect the environment and public health, which the Fire Department has used solely for the purchase of fire and emergency response equipment and supplies, including the purchase of 19 self-contained breathing apparatus.

43. Respondent certifies that it is not required to perform or develop this SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for this SEP in any other enforcement action.

44. Respondent agrees that any public statement it makes referring to this SEP must include the following language, "Marathon Pipe Line LLC, made this contribution as part of a settlement of an enforcement action brought by the United States Environmental Protection Agency for alleged violations of the emergency planning requirements of the Clean Air Act."

45. Respondent agrees that it will neither capitalize into inventory or basis, nor deduct the \$87,000 contribution, for federal income tax purposes.

General Provisions

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

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

48. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 46, above,

compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

49. Respondent certifies that, to the best of its knowledge the Woodhaven Facility, as described in Paragraph 26, is in full compliance with 40 C.F.R. Part 68 on the date that Respondent signs this CAFO.

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

51. 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.

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

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

54. The effective date of this CAFO is the date when this CAFO is filed with the Regional Hearing Clerk, U.S. EPA, Region 5.

55. This CAFO terminates upon compliance with all terms and conditions set forth in the CAFO.

Marathon Pipe Line LLC, Respondent

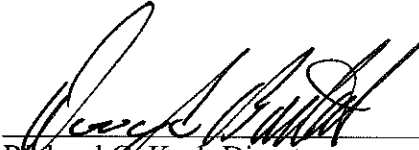
5/8/14
Date

Craig O. Pierson
C. O. Pierson, President
Marathon Pipe Line LLC



United States Environmental Protection Agency, Region 5, Complainant

Date 5/28/2014




Richard C. Karl, Director
for Superfund Division

CONSENT AGREEMENT and FINAL ORDER
In the Matter of: Marathon Pipe Line LLC, Findlay, OH
Docket No. CAA-05-2014-0032

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, U.S. EPA, Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

5-30-14
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

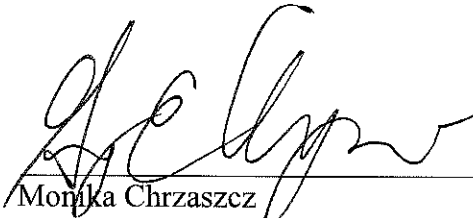
Certificate of Service

I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order (CAFO) to be served upon the persons designated below, on the date below, by causing said copies to be delivered by depositing in the U.S. Mail, First Class, and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelope addressed to:

Virginia M. King, Esq.
Assistant General Counsel – Environmental, Safety and Security
Marathon Pipe Line LLC
539 South Main St.
Findlay, Ohio 45840-3229

I have further caused the original CAFO and this Certificate of Service, and one copy, to be filed with the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

Dated this 4 day of June, 2014.



Monika Chrzaszcz
U.S. Environmental Protection Agency
Region 5