

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Rivera for

Amanda Helwig  
Name of Case Attorney

4/23/09  
Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number EPCRA-01-2008-0106

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

CITGO Petroleum Corporation  
385 Quincy Ave  
Braintree, MA 02184

Total Dollar Amount of Receivable \$ 51,511 Due Date: 5/21/09

SEP due? Yes  No \_\_\_\_\_ Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

Phone Number \_\_\_\_\_



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1  
1 CONGRESS STREET, SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

RECEIVED

2009 APR 23 A 11: 14

EPA ORC  
OFFICE OF  
REGIONAL HEARING CLERK

**HAND DELIVERED**

April 23, 2009

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100 (RAA)  
Boston, Massachusetts 02114-2023

RE: In the Matter of CITGO Petroleum Corporation  
Docket No. EPCRA-01-2008-0106

Dear Ms. Santiago,

Enclosed for filing in the above-referenced matter, please find the original and one copy of the Consent Agreement and Final Order, signed by both parties and approved by the Regional Judicial Officer, and the Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

Amanda J. Helwig  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1

cc: Gary L. Gill-Austern, Esq.  
Nutter McClennen & Fish LLP

Enclosures

Toll Free • 1-888-372-7341

Internet Address (URL) • <http://www.epa.gov/region1>

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

RECEIVED

2009 APR 23 A 11: 14

\_\_\_\_\_) )  
 In the Matter of: ) )  
 ) )  
**CITGO Petroleum Corporation** ) )  
**385 Quincy Avenue** ) )  
**Braintree, MA 02184** ) )  
 ) )  
 Respondent. ) )  
 ) )  
 \_\_\_\_\_) )

Docket No. EPCRA-01-2008-0106

EPA ORC  
CLERK

**CONSENT AGREEMENT AND FINAL ORDER**

The United States Environmental Protection Agency (“EPA”) issued an Administrative Complaint and Notice of Opportunity for Hearing to CITGO Petroleum Corporation (“Respondent”) on September 22, 2008. EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving the enforcement action commenced by the filing of the Complaint. The parties agree to settle the action through the issuance of this CAFO, pursuant to 40 C.F.R. § 22.18(b) of EPA’s “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination, or Suspension of Permits,” 40 C.F.R. Part 22.

NOW, THEREFORE, before taking any testimony, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

**I. PRELIMINARY STATEMENT**

1. On September 22, 2008, EPA issued a Complaint to Respondent pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986

("EPCRA"), 42 U.S.C. § 11045, and the regulations promulgated thereunder at 40 C.F.R. Part 370.

2. The Complaint alleged that Respondent violated Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal regulations at 40 C.F.R. Part 372, by failing to submit timely, complete, and accurate Toxic Chemical Release Inventory Reporting Forms for toxic chemicals and chemical categories listed under 40 C.F.R. § 372.65 that were manufactured, processed, or otherwise used in quantities exceeding the toxic chemical thresholds established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), at the CITGO Braintree Oil Terminal, located in Braintree, Massachusetts (the "Facility").

3. Without admitting or denying the factual allegations contained in the Complaint, Respondent consents to the terms of this Consent Agreement and to the issuance of the Final Order hereinafter recited. Respondent also consents, for the purposes of settlement, to the payment of the civil penalty cited in Paragraph 17 herein and to the performance of the supplemental environmental project ("SEP") hereinafter described.

4. For the purpose of this proceeding only, Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and hereby waives any defenses it might have as to jurisdiction and venue.

5. Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint and waives its right to appeal the Final Order.

## II. TERMS OF SETTLEMENT

6. Respondent hereby certifies that the Facility is currently in compliance with the reporting requirements set forth in Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal regulations at 40 C.F.R. Part 372.

7. Respondent hereby certifies that it will ensure that the Material Safety Data Sheets for products manufactured at the Facility contain accurate information regarding the chemical components of such products.

8. Respondent shall complete the following SEP, which the parties agree is intended to secure significant environmental and public health protection and improvements. The SEP shall consist of the acquisition and donation to the Braintree Fire Department, Braintree, Massachusetts, of the emergency response equipment, products or services specified in Exhibit A attached hereto and incorporated herein by reference.

9. Respondent shall complete the SEP no later than nine months from the effective date of this CAFO.

10. The total expenditure for the SEP shall be not less than \$125,000, in accordance with the specifications set forth in Exhibit A. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report, as described in Paragraph 12 hereof.

11. Respondent hereby certifies that, as of the date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

12. No later than 60 days after the deadline set forth in Paragraph 9 for completing the SEP (the "Completion Date"), Respondent shall submit to EPA a SEP Completion Report.

The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
- c. Confirmation by the Braintree Fire Department that the items specified in Exhibit A have been received in good and functional condition or rendered in a professional manner; and
- d. Certification by Respondent that the SEP has been fully implemented pursuant to the provisions of this CAFO.

13. Respondent shall use best efforts to ensure that all manufacturer, dealer and vendor warranties for the donated SEP items specified in Exhibit A run to the benefit of the Braintree Fire Department.

14. a. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in Paragraph 8 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP set forth in Paragraph 10 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) If Respondent has failed to meet all of the terms and provisions of this CAFO relating to the performance of the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of \$125,000, plus interest, from the effective date of the CAFO.
- (ii) If the SEP is satisfactorily completed, but the Respondent spent less than 90 percent of the amount of money required to be spent for the SEP, Respondent shall pay a stipulated penalty to the United States in an

amount equal to two times the amount by which Respondent's expenditure fell short of the amount required to be spent hereunder.

- (iii) For every day that performance of the SEP does not meet the schedule for performance set forth in this CAFO, Respondent shall pay a stipulated penalty in the amount of \$150 for each day that the deadline for performance is not met.
- (iv) For failure to submit the SEP Completion Report required by Paragraph 12 above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the Completion Date until the report is submitted.

b. Stipulated penalties due pursuant to subparagraphs (a)(ii) through (iii) above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the required activity.

c. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 18 hereof, and interest and late charges shall be paid as stated in Paragraphs 18-19 hereof.

15. All penalties, interest, and other charges shall represent penalties assessed by EPA, and shall not be deductible for purposes of federal taxes. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures in performing the SEP.

16. Respondent further agrees that any public announcement, presentation, speech, press release, publication or similar public statement, oral or written, referring to said expenditures shall include the following language, "This project was conducted in connection with the settlement of an action taken by the U.S. Environmental Protection Agency for alleged violations of the Emergency Planning and Community Right-to-Know Act."

17. In light of the above, and taking into account such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a total civil penalty in the amount of \$51,571 for the EPCRA violations alleged in the Complaint.

18. Respondent shall pay the penalty of \$51,571, and any interest thereon, within thirty (30) days after the effective date of this CAFO, by submitting a bank, cashier's, or certified check, payable to "Treasurer, United States of America." This check shall be sent to:

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

Respondent shall note the case name and respective docket numbers ("In the Matter of CITGO Petroleum Corporation," EPA Docket No. EPCRA-01-2008-0106) on the check and in accompanying cover letters and shall provide copies of the checks and letters to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region I  
Suite 1100, Mail Code: RAA  
One Congress Street  
Boston, MA 02114-2023

and

Amanda J. Helwig  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region I  
One Congress Street  
Suite 1100, Mail Code: RAA  
Boston, MA 02114-2023  
Tel: (617) 918-1180

19. Pursuant to 31 U.S.C. § 3717, if Respondent fails to pay in full the penalty amount specified in Paragraph 18, Respondent may be subject to a civil action to collect the assessed penalty plus interest and penalties on debts owed to the United States and a charge to

cover the cost of processing and handling a delinquent claim. In the event that any partial payment of the civil penalty, plus interest thereon, is not paid when due without demand, the penalty plus accrued interest shall be payable with additional interest from the original due date to the date of payment, at the rate of the United States Treasury tax and loan rate, in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent per year will be assessed on any portion of the debt that remains delinquent more than 90 days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d).

20. Payment of the penalties, interest, or other charges does not waive, suspend, or modify the responsibility of Respondent to comply with the requirements of all of the federal laws and regulations administered by EPA and, except as provided in Paragraph 21 herein, shall not be a defense to any actions subsequently commenced pursuant to said laws and regulations.

21. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325 of EPCRA for the specific violations alleged in the Complaint. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

22. Each party shall bear its own costs and attorneys' fees in this proceeding.

23. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, successors, and assigns.

24. The undersigned representative of Respondent certifies that s/he is fully authorized by CITGO Petroleum Corporation to enter into the terms and conditions of this CAFO and to execute and legally bind CITGO Petroleum Corporation to it.

25. In accordance with 40 C.F.R. § 22.31(b), the effective date is the date, following the execution of the CAFO by the Regional Judicial Officer in accordance with 40 C.F.R. § 22.18(b)(3), on which this CAFO is filed with the Regional Hearing Clerk. EPA will provide contemporaneous written notice of such filing and the date thereof to Respondent.

For Respondent:



NAME John G. McCrossin  
TITLE Manager, EHS&S  
CITGO Petroleum Corporation

4/9/09  
Date



Gary L. Gill-Austern  
Nutter McClennen & Fish LLP

4/14/09  
Date

For Complainant:

Susan Studlien  
Susan Studlien  
Director  
Office of Environmental Stewardship  
U.S. EPA, Region 1

04/23/09  
Date

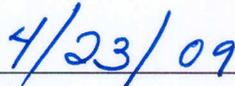
Amanda J. Helwig  
Amanda J. Helwig  
Enforcement Counsel  
U.S. EPA, Region 1

4/23/09  
Date

**IV. FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the above Consent Agreement.

  
\_\_\_\_\_  
LeAnn Jensen  
Acting Regional Judicial Officer  
U.S. EPA, Region 1

  
\_\_\_\_\_  
Date

## **EXHIBIT A**

**Docket No. EPCRA-01-2008-0106**

### **Supplemental Environmental Project (“SEP”) for the Benefit of the Braintree Fire Department**

Respondent anticipates donating the following items to the Braintree Fire Department. Respondent may make substitutions with regard to the brand of the items, as long as the nature and function of the SEP are not compromised by such substitution.

1. Hazardous Material Command Vehicle: 2009 Ford Explorer XLT, 4WD, Automatic with Braintree Fire Department-approved LED emergency lighting package, siren, 2-way radio, laptop mount and markings. Expected cost: \$45,000.
2. Computer Aided Dispatching System: Alpine RedAlert Software upgrade to central dispatching server, incorporating mobile unit laptops for 9 emergency vehicles, with fire site pre-planning and hazardous material data capabilities. Includes GPS and AVL tracking. Includes on-site training by Alpine instructors. Expected cost: \$30,000.
3. Vehicle Computers: Purchase and installation of nine (9) laptops into the Braintree Fire Department fleet of engines, ladder trucks and command vehicles. Laptops will be Panasonic Toughbooks or similar design from other manufacturer. Expected cost: \$50,000.

1800784.9

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

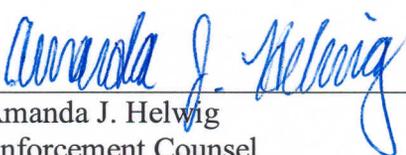
Original and one copy,  
by hand:

Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I  
One Congress Street, Suite 1100 (RAA)  
Boston, MA 02114-2023

One copy, by certified mail:

Gary L. Gill-Austern, Esq.  
Nutter McClennen & Fish LLP  
World Trade Center West  
155 Seaport Boulevard  
Boston, MA 02210

Date: 4/23/2009

  
\_\_\_\_\_  
Amanda J. Helwig  
Enforcement Counsel  
U.S. EPA, Region I  
One Congress Street, Suite 1100 (RAA)  
Boston, MA 02114-2023  
Phone: (617) 918-1180  
Fax: (617) 918-0180