



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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January 13, 2021
8:28 AM
Received by
EPA Region VIII
Hearing Clerk

DOCKET NO.: CAA-08-2021-0002

IN THE MATTER OF:)
)
BIG WEST OIL LLC) FINAL ORDER
)
)
)
)
RESPONDENT)

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 13 DAY OF January, 2021.

STEPHANIE TALBERT Digitally signed by
STEPHANIE TALBERT
Date: 2021.01.13
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Stephanie Talbert
Acting Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

January 13, 2021
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IN THE MATTER OF:

Big West Oil LLC
333 West Center Street
North Salt Lake, UT 84054

Respondent.

CONSENT AGREEMENT

Docket No.: CAA-08-2021-0002

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 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 of Practice), as codified at 40 C.F.R. part 22.
2. Big West Oil LLC (Respondent) owns and/or operates the Big West Oil Refinery (Facility) located in North Salt Lake, Utah.
3. EPA and Respondent, having agreed settlement of this action is in the public interest, consent to the entry of this Consent Agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

4. This Agreement is issued under the authority vested in the Administrator of the EPA by section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d). The undersigned EPA official has been duly authorized to institute this action.
5. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for administrative penalty assessment. 42 U.S.C. § 7413(d), 40 C.F.R § 19.4.
6. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
7. The Final Order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

8. The Administrator is authorized to promulgate regulations regarding the prevention and detection of accidental releases of certain regulated substances under section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). The Administrator is required to promulgate regulations requiring the owners of stationary sources where a regulated substance is present above a threshold quantity to prepare a risk management plan (RMP) to prevent or minimize risks of accidental releases of those regulated substances under section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B). The regulations, promulgated by EPA pursuant to section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), are set forth in 40 C.F.R. part 68.
9. 40 C.F.R. § 68.3 defines the term “Stationary Source” to mean “any buildings, structures, equipment, installations or substance emitting stationary source 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.”
10. 40 C.F.R. § 68.3 defines the term “Regulated substance” to mean “any substance (listed pursuant to section 112(r)(3) of the CAA) in 40 C.F.R. § 68.130.” Threshold quantities for the regulated substances are included in 40 C.F.R. § 68.130.
11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines the term “person” to include in relevant part, an individual, corporation, or partnership.

IV. STIPULATED FACTS

12. Respondent is a limited liability company authorized to do business in the state of Utah and is therefore a “person” and subject to regulation under the CAA.
13. Respondent is the owner and/or operator of the Big West Oil Refinery, a stationary source, located at 333 West Center Street, North Salt Lake, Utah, 84054 (the Facility).
14. The Facility uses, handles, and/or stores more than a threshold quantity of Flammable Mixture and Hydrogen fluoride/Hydrofluoric acid, which are regulated substances, as specified at 40 C.F.R. §§ 68.115 and 68.130.
15. Pursuant to section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), Respondent is required to prepare and implement a risk management program to detect and prevent or minimize accidental of the substances identified in paragraph 14, above.
16. From August 15 to August 18, 2016, authorized representatives of the EPA conducted an inspection of the Facility to assess compliance with section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. part 68.
17. During that inspection, the EPA representatives observed alleged violations of section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. part 68. The alleged violations identified by authorized representatives of the EPA during the inspection are described in Section V. of this Agreement, below.

18. The EPA and Respondent entered into an Administrative Compliance Order on Consent (AOC), Docket No. CAA-08-2019-0013, pursuant to sections 113 and 114 of the CAA, 42 U.S.C. §§ 7413 and 7414, which became effective on September 16, 2019. The AOC summarized RMP deficiencies and potentially dangerous conditions observed by the EPA representatives during the inspection; ordered Respondent to comply with RMP requirements at the Facility; and ordered Respondent to certify and document it had corrected the RMP deficiencies within one year from the effective date of the AOC. EPA received a notification of compliance certification from Respondent dated September 18, 2020 which indicated that Respondent had corrected the RMP deficiencies outlined in the AOC on or before September 9, 2020.

V. ALLEGED VIOLATIONS OF LAW

19. 40 C.F.R. § 68.65(d)(1)(ii) provides that the owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by the rule, and shall keep process safety information up-to-date. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances. This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process. Information pertaining to the equipment in the process shall include piping and instrument diagrams (P&ID's). Respondent's piping and instrument diagrams P&ID G-600-PID-0011 Rev. 0, P&ID G-0700-PID-1010 Rev. 0, and P&ID G-600-PID-0013 Rev. 0 were found to not accurately reflect the equipment in the process at the Facility. By failing to include accurate piping and instrument diagrams for the equipment in the process in the process safety information, Respondent violated 40 C.F.R. § 68.65(d)(1)(ii).
20. 40 C.F.R. § 68.65(d)(1)(vi) provides that the owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by the rule, and shall keep process safety information up-to-date. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances. This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process. Information pertaining to the equipment in the process shall include design codes and standards employed. Respondent's process safety information did not include nameplates, national board numbers, or U1 forms for vessels D-614, D-616, D-627, and E-619A at the Facility. By failing to include nameplates, national board numbers, or U1 forms for the four vessels, Respondent failed to include design codes and standards employed for the equipment in the process at the Facility in the process safety information and violated 40 C.F.R. § 68.65(d)(1)(vi).
21. 40 C.F.R. § 68.67(e) provides that the owner or operator shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions. Respondent did not

document the resolution of recommendations from their 2012 Reformer PHA. By not assuring that the PHA recommendation resolutions were documented, Respondent violated 40 C.F.R. § 68.67(e).

22. 40 C.F.R. § 68.69(a)(3) provides that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address safety and health considerations including: (i) properties of, and hazards presented by, the chemicals used in the process; and (iii) control measures to be taken if physical contact or airborne exposure occurs. Respondent's operating procedure, HF Alky Normal Operations – Unload HF Acid Truck procedure (ALKY-OP-08-05; Revision O; February 18, 2013; “#4 ALKY-OP-08-05 Normal Operations - Unload HF Acid Truck (1)”), did not provide explicit safety and health considerations or control measures to be taken if physical contact or airborne exposure occurs. By not addressing safety and health considerations, Respondent violated 40 C.F.R. § 68.69(a)(3).
23. 40 C.F.R. § 68.71(b) provides that refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. Respondent did not provide refresher training for two operators between August 2012 and December 2016. By not providing refresher training at least every three years, Respondent violated 40 C.F.R. § 68.71(b).
24. 40 C.F.R. § 68.73(b) provides that the owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment. Respondent did not have process piping appropriately classified per Section 5 of written procedure, EP-15-4-2, In-Plant Inspection of Existing Piping Systems, which calls for the classification of piping systems for the purposes of inspection and monitoring. By not having process piping appropriately classified at the Facility in accordance with written procedure EP-15-4-2, Respondent did not implement written procedures to maintain the on-going integrity of process equipment and violated 40 C.F.R. § 68.73(b).
25. 40 C.F.R. § 68.73(d)(1) provides that inspections and tests shall be performed on process equipment. Respondent failed to inspect process piping at established Condition Measurement Locations where piping was insulated or required a man lift or harness. Respondent failed to conduct a visual external inspection on process piping circuit 8”-HC-400-600-9170-BAAA1-HC. Respondent failed to conduct a non-destructive examination on process piping circuit 6”-HC-400-9919-AAAA1-PP. Respondent failed to conduct a visual external inspection and an internal inspection on vessel D-460A. Respondent failed to conduct an internal inspection on vessel D-914. Respondent failed to conduct an internal inspection on vessel D-1001. Respondent failed to conduct a non-destructive examination and an internal inspection on vessel D-1395. Respondent failed to conduct a non-destructive examination and an internal inspection on vessel E-616D. By failing to perform inspections and tests on process equipment at the Facility, Respondent violated 40 C.F.R. § 68.73(d)(1).
26. 40 C.F.R. § 68.73(d)(2) provides that inspection and testing procedures shall follow recognized and generally accepted good engineering practices. Respondent did not evaluate, analyze, and record next inspection dates, corrosion rate determinations, remain life calculations, and required thickness determinations for data collected from inspection and testing performed on process piping in accordance with API 570 — Piping Inspection Code: In-service Inspection, Rating, Repair, and

Alteration of Piping Systems. By not evaluating, analyzing, and recording data collected from inspection and testing performed on process piping at the Facility in accordance with API 570, Respondent did not follow recognized and generally accepted good engineering practices for inspection and testing of process equipment at the Facility and violated 40 C.F.R. § 68.73(d)(2).

27. 40 C.F.R. § 68.73(d)(2) provides that inspection and testing procedures shall follow recognized and generally accepted good engineering practices. Respondent did not evaluate, analyze, and record next inspection dates, corrosion rate determinations, remain life calculations, and required thickness determinations for data collected from inspection and testing performed on pressure vessels in accordance with API 510 — Pressure Vessel Inspection Code: In-service Inspection, Rating, Repair, and Alteration. By not evaluating, analyzing, and recording data collected from inspection and testing performed on pressure vessels at the Facility in accordance with API 510, Respondent did not follow recognized and generally accepted good engineering practices for inspection and testing of process equipment at the Facility and violated 40 C.F.R. § 68.73(d)(2).
28. 40 C.F.R. § 68.75(b)(5) provides that the owner or operator shall establish and implement written procedures to manage changes (except for “replacements in kind”) to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process. The procedures shall assure that the following considerations are addressed prior to any change: (5) Authorization requirements for the proposed change. Respondent authorized Management of Change (MOC) 1016 with no dates documented for the Pre-Startup Safety Review (PSSR). By not implementing written procedures to assure that authorization requirements for proposed changes are addressed prior to changes to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process, Respondent violated 40 C.F.R. § 68.75(b)(5).
29. 40 C.F.R. § 68.81(d) provides that a report shall be prepared at the conclusion of the investigation which includes at a minimum: (1) Date of incident; (2) Date investigation began; (3) A description of the incident; (4) The factors that contributed to the incident; and, (5) Any recommendations resulting from the investigation. Respondent did not prepare a report at the conclusion of the investigation for incidents which occurred at the Reformer on 2/21/2014, the Naphtha Hydrotreater on 2/22/2014, the Crude Unit on 3/25/2014, the Crude Unit on 12/11/2015, and the Alkylation Unit on 2/20/2016. By not preparing a report at the conclusion of the investigation for incidents at the Facility, Respondent violated 40 C.F.R. § 68.81(d).
30. 40 C.F.R. § 68.95(a)(4) provides that the owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment. Such program shall include the following elements: (4) Procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes. The owner or operator shall review and update the plan as appropriate based on changes at the stationary source or new information obtained from coordination activities, emergency response exercises, incident investigations, or other available information, and ensure that employees are informed of the changes. Respondent did not review and update the emergency response plan after 2011 to reflect changes of key critical personnel such as Refinery Manager, Fire Chief, and two Captains who were no longer present at the Facility. By not implementing procedures to review and update the emergency response plan to reflect changes at the Facility, Respondent violated 40 C.F.R. § 68.95(a)(4).

31. 40 C.F.R. § 68.175 provides that for each Program 3 process, the owner or operator shall provide the information indicated in paragraphs (b) through (p) of this section. If the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies. Respondent did not provide information for the MSCC (catalytic cracker) unit in their June 13, 2014 Risk Management Plan re-submission. Respondent calculated the MSCC unit inventory totals of Flammable Mixture to be 82,972 lbs which exceeds the 10,000 lbs threshold for a covered process. By not providing the information indicated in paragraphs (b) through (p) of 40 C.F.R. § 68.175 for the MSCC unit at the Facility, Respondent violated 40 C.F.R. § 68.175.

VI. TERMS OF CONSENT AGREEMENT

32. For the purpose of this proceeding, Respondent:

- a. admits the jurisdictional allegations in section II of this Agreement;
- b. neither admits nor denies the alleged violations of law stated in section V of this Agreement;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the conditions specified in this Agreement;
- e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- f. waives any right to contest any final order approving this Agreement; and
- g. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

33. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R part 19 authorize EPA to assess an administrative civil penalty per day of violation for each violation of the implementing regulations associated with section 112(r) of the CAA, 42 U.S.C. § 7412(r).

34. Pursuant to section 113(e) of the CAA, 42 U.S.C. § 7413(e), the EPA is required to consider, in addition to such other factors as justice may require, to the extent known, the size of Respondent's business, the economic impact of the penalty on the business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, payment by the Respondent of penalties previously assessed for the same violation, the economic benefit of non-compliance, and the seriousness of the violations.

35. Based on the Alleged Violations of Law, and after consideration of the statutory factors in paragraph 34 above, EPA has determined a civil penalty of three hundred forty-four thousand, three hundred and sixty-four dollars (\$344,364) is appropriate to settle this matter.

36. Penalty Payment. Respondent agrees to:

- a. pay a civil penalty in the amount of \$344,364 within 30 calendar days of the Effective Date of this Agreement;
- b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment> and <https://www.epa.gov/financial/additional-instructions-making-payments-epa>;
- c. identify the payment with the docket number that appears on the final order,
- d. within 24 hours of payment, email proof of payment to Steven Ramirez and Marc Weiner at ramirez.stevena@epa.gov and weiner.marc@epa.gov (proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the Final Order).

37. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:

- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States’ enforcement expenses; “and a 10% quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5)”;
- b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
- d. suspend or revoke Respondents’ licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

38. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

39. Respondent agrees, by signing this Agreement, that all alleged violations have been corrected.

40. Respondent agrees and certifies, by signing the Agreement, that the Facility is in full compliance with section 112(r) of the CAA, 42 U.S.C. § 7412(r) and the implementing regulations contained in 40 C.F.R. part 68.

41. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in the Facility. Any change in ownership or corporate control of Respondent, including but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.
42. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
43. The parties consent to service of a final order by e-mail at the following valid e-mail addresses: weiner.marc@epa.gov (for Complainant), and marney.devroom@fjmgmt.com (for Respondent).
44. Except as qualified by paragraph 37, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VII. EFFECT OF CONSENT AGREEMENT

45. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations alleged in Section V., above, and further described in paragraphs 16 and 17, above.
46. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board/ Regional Judicial Officer, or other delegatee.
47. Any violation of this Agreement, and subsequently issued final order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties of up to \$48,762 per day for each violation, as provided in section 113(b), 42 U.S.C. § 7413(b) and adjusted for inflation pursuant to 40 C.F.R. part 19. The EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.
48. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
49. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
50. If and to the extent EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.

VIII. EFFECTIVE DATE

51. This Agreement shall become effective on the date the Final Order is filed by the hearing clerk.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8,
Complainant.**

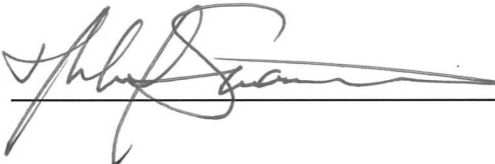
Date: 01/12/21

By: **SUZANNE BOHAN** Digitally signed by SUZANNE
BOHAN
Date: 2021.01.12 08:00:37 -07'00'

Suzanne J. Bohan, Director,
Enforcement and Compliance Assurance Division

**BIG WEST OIL LLC,
Respondent.**

Date: 1/11/2021

By: 

Print: MICHAEL SWANSON

Title: PRESIDENT - REFINING DIV

CERTIFICATE OF SERVICE

The undersigned certifies that the attached **CONSENT AGREEMENT** and the **FINAL ORDER** in the matter of **BIG WEST OIL LLC; DOCKET NO.: CAA-08-2021-0002** was filed with the Regional Hearing Clerk on January 13, 2021.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney, and sent via certified receipt email on January 13, 2021, to:

Respondent

Mike Swanson, President
Refining Division
Big West Oil LLC
Marney.devroom@fjmgmt.com

EPA Financial Center

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
Chalifoux.Jessica@epa.gov

January 13, 2021

MELISSA
HANIEWICZ

Digitally signed by
MELISSA HANIEWICZ
Date: 2021.01.13
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Melissa Haniewicz
Regional Hearing Clerk