



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

JAN 8 - 2014

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7011 3500 0000 0359 6525

Mr. H. Ed Patterson
Sr. Vice President
Wagner Oil Company
500 Commerce St
Suite 600
Fort Worth, TX 76102

Re: Consent Agreement and Final Order
In the Matter of Wagner Oil Company
Docket No. CAA-06-2014-3302

Dear Mr. Patterson:

Enclosed is a copy of the executed Consent Agreement and Final Order (CAFO) in the matter referenced above for execution by Wagner Oil Company.

As provided in the CAFO, Wagner Oil Company will have thirty (30) days from the effective date of the CAFO to pay the civil penalty of \$30,000.00

If you have any questions regarding this CAFO, please contact Daniel Hoyt, Enforcement Officer, at (214) 665-7326.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins".

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
BEFORE THE ADMINISTRATOR

FILED
2014 JAN 14 PM 9:15
REG. COUNCIL DIRECTOR OFFICE
EPA REGION VI

In the Matter of:

Wagner Oil Company
Acadia Parish, Louisiana

Respondent

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EPA Docket No.
CAA-06-2014-3302

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (“EPA”), Region 6 (“Complainant”) and Wagner Oil Company (“Respondent”) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (“CAFO”).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to sections 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, as amended (“Act” or “CAA”), 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13, 22.18(b)(2) and (3), and 22.34.

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

3. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth herein, and waives all defenses, which have been raised or could have been raised to the claims set forth in this CAFO.

4. Compliance with all the terms and conditions of this CAFO shall resolve only those violations that are set forth herein.

5. Respondent consents to the issuance of this CAFO and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

II. ALLEGATIONS

6. Respondent is a corporation authorized to do business in the State of Louisiana.

7. Respondent owns and operates the E Benoit No. 1 Production Facility, an oil production site located near Morse, in Acadia Parish, Louisiana, near 2361 Everglade Rd (“Facility”).

8. The Respondent stored produced water including a skim layer of crude oil in a 500-barrel fiberglass tank at the Facility.

9. On June 14, 2013, at around 8:02 pm, lightning struck the 500-barrel fiberglass tank.

10. Flammable hydrocarbon vapors from the tank were released and ignited, causing a fire. A 110-gallon poly day tank containing lube oil for pumps melted during the fire, releasing 20 gallons of lube oil.

11. An estimated 160 barrels of produced water, an undetermined amount of crude oil and 20 gallons of lube oil were released from the respective tanks.

12. The fire lasted for seven hours and 30 minutes (approximately) and the Morse and Mermentau Volunteer Fire Departments responded.

13. Three residences in the area were sheltered in place and two to three miles of Everglade Rd was closed in each direction during the fire.

14. There was no lightning protection installed at the site.

15. The National Fire Protection Association (NFPA) produced a revised edition of the "Standard for Installation of Lightning Protection Systems" in 2011 (NFPA 780) to "Protect people and property from fire risk and related hazards associated with lightning strikes". Among, but not limited to, the recommendations was the need for lightning protection on non-metallic tanks storing liquids that can give off flammable vapors. Liquids that can give off flammable vapors "shall be stored in essentially gastight structures".

16. In 1997, the U.S. EPA issued an alert entitled "Lightning Hazard to Facilities Handling Flammable Substances". The alert recommends lightning protection for tanks storing flammable substances, unless the tanks are "metallic structures that are electrically continuous, tightly sealed to prevent escape of liquids, vapors, or gases, and of adequate thickness to withstand direct lightning strikes".

17. The American Petroleum Institute (API) produced the seventh edition of "Protection Against Ignitions Arising Out of Static, Lightning, and Stray Currents" in 2008 (API 2003). The API standard indicates that "fully nonconductive tanks are inherently not capable of withstanding direct-stroke lightning. As a minimum, any conductive appurtenances need to be grounded for lightning protection. If the ignition of these tanks constitutes an unacceptable risk, the tanks can be protected by a lightning protection system or replaced by a metal tank".

18. Crude oil and produced waters are extremely hazardous substances due to their flammability and explosive nature.

19. The hazards associated with lightning in and around tanks containing flammable or explosive substances is well established as are the standards for preventing or minimizing explosions and fires from lightning strikes in such areas.

20. The Respondent failed to safely operate the E Benoit No. 1 Production Facility by either installing lightning protection or converting the 500-barrel fiberglass produced water tank to a steel tank, prior to June 14, 2013.

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

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

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

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

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

26. The release of flammable hydrocarbons from the 500-barrel produced water fiberglass tank at the Facility on June 14, 2013, constituted an “accidental release” as that term is defined by section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

27. Respondent failed to design and maintain a safe facility and did not take such necessary steps to minimize the consequences of accidental releases by not fully utilizing commonly available and accepted practices to ensure safety, by either installing lightning protection or replacing the 500-barrel produced water fiberglass tank with a steel tank.

28. Respondent’s failure constitutes a violation of the general duty clause in section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

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

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

30. Pursuant to the authority granted in sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and taking into consideration the size of the Respondent’s business, the economic impact of the penalty on the Respondent’s business, the Respondent’s full compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of penalties previously assessed for the same violation (if any), the economic benefit of noncompliance, and the

seriousness of the violation, as well as other factors which justice may require, EPA and Respondent agree that an appropriate penalty to settle this matter is \$30,000.

31. Respondent shall pay the assessed penalty within thirty (30) days of the effective date of this CAFO. Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA -- Region 6". Payment shall be remitted in one of three ways: regular U.S. Postal mail (including certified mail), or U.S. Postal Service express mail - the check should be remitted to:

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

For overnight mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket number CAA-06-2014-3302 shall be clearly typed on the check to ensure proper credit. If payment is made by check, the check shall also be

accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. If payment is made by wire service, the wire transfer instructions shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter or wire transfer instructions to the following:

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

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to these instructions will ensure that proper credit is given when penalties are received in the Region.

32. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

33. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be

recovered by EPA on any amount of the civil penalty that is not paid by the due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

34. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

35. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. RETENTION OF ENFORCEMENT RIGHTS

36. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

37. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

38. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

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

D. COSTS

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


E. EFFECTIVE DATE

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

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

FOR THE RESPONDENT:

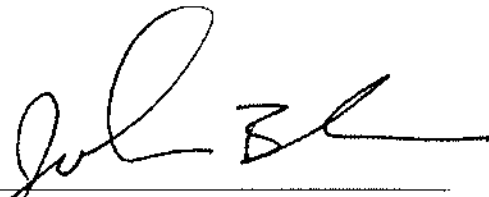
12-18-2013
Date



H. Ed Patterson
Sr. Vice President

FOR THE COMPLAINANT:

1-8-14
Date




John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 1-13-14



Regional Judicial Officer

CERTIFICATE OF SERVICE

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: # 70113500000003596525

H. Ed Patterson
Sr. Vice President
Wagner Oil Company
500 Commerce St.
Suite 600
Fort Worth, TX 76102

Date: Jan. 14, 2014

Sandra Hardy
U.S. EPA, Region 6
Dallas, Texas