

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND

IN THE MATTER OF:

Motiva Enterprises LLC
250 Eagles Nest Road
Bridgeport, Connecticut 06607

Proceeding under Section 113(d)
of the Clean Air Act

Docket No. CAA-01-2008-0031

**CONSENT AGREEMENT AND
FINAL ORDER**

2008 APR -1 P 3:00
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REGIONAL HEARING CLERK

I. STATUTORY AUTHORITY

1. This is a Consent Agreement and Final Order ("CAFO") to resolve alleged violations of federal air pollution regulations committed by Motiva Enterprises LLC ("Motiva" or "Respondent") at a gasoline bulk terminal in Bridgeport, Connecticut ("Bridgeport terminal"). This CAFO is issued under the authority granted to the United States Environmental Protection Agency, Region 1 ("EPA" or "Complainant") by Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d). Pursuant to 40 C.F.R. § 22.13(b), this CAFO is being issued without an accompanying administrative complaint.

II. BACKGROUND

2. Motiva owns and operates the Bridgeport terminal, which stores gasoline and other petroleum products in large aboveground tanks. The stored gasoline is pumped through a loading rack into tanker trucks for delivery to gas stations.

Motiva's truck loading operations emit volatile organic compounds ("VOCs"), which are controlled through the use of two vapor bladder tanks and a carbon adsorption vapor recovery unit ("VRU").

3. On June 14, 2006, EPA conducted an inspection of the Bridgeport terminal. Based on this inspection, EPA issued Motiva an Administrative Order and Reporting Requirement on December 21, 2006 ("Administrative Order"). The Administrative Order alleged that Motiva violated sections of two federal air regulations – the New Source Performance Standards for bulk gasoline terminals, promulgated at 40 C.F.R. Part 60, Subpart XX ("NSPS Subpart XX"), and the National Emission Standards for Hazardous Air Pollutants for bulk gasoline terminals, promulgated at 40 C.F.R. Part 63, Subpart R ("NESHAP Subpart R"). The Administrative Order further alleged that Motiva violated its CAA Title V Permit, which references these regulatory requirements.

4. Subsequently, EPA issued additional Reporting Requirements to Motiva on March 5, 2007, May 21, 2007 and June 12, 2007. Pursuant to the May and June 2007 Reporting Requirements, Motiva submitted various continuous monitoring data to EPA regarding operating pressures and VOC concentrations at the Bridgeport terminal's two vapor bladder tanks.

III. GENERAL TERMS

5. The terms of this CAFO shall apply to and are binding on Complainant and on Respondent, its officers, directors, successors and assigns.

6. For purposes of this proceeding, Respondent admits the jurisdictional allegations of the CAFO; neither admits nor denies specific factual allegations contained in Section IV of the CAFO; consents to the assessment of the stated civil penalty, to the issuance of the specified compliance or corrective action in the order, and to any conditions specified in the consent agreement; and waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement.

IV. CAA VIOLATIONS

7. EPA repeats and re-alleges the violations of NSPS Subpart XX, NESHAP Subpart R, and Motiva's CAA Title V Permit described in EPA's previous Administrative Order. (This document is attached to the CAFO as Exhibit 1.) Based on continuous monitoring data subsequently provided by Motiva, EPA alleges additional violations of these requirements from July to December 21, 2007.

V. CIVIL PENALTIES

8. Respondent shall pay a civil penalty of \$ 75,000. Complainant has determined that this is an appropriate settlement penalty based on the nature of the alleged violations and other relevant factors, including Motiva's agreement, memorialized in Section VI of this CAFO, to install a new, larger capacity carbon adsorption VRU and permanently cease operation of the two vapor bladder tanks.

9. To pay the CAA penalty, Respondent shall submit, no later than thirty (30) days after the effective date of this CAFO, a check in the amount of \$ 75,000, payable to the order of the "Treasurer, United States of America," and referencing the

title of this action and the case docket number (CAA-01-2008-0031). In the alternative, Respondent may pay the penalty electronically in accordance with written instructions provided by Complainant. If Respondent sends a check via regular mail, the following address shall be used:

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

If Respondent sends a check via express mail, the following address shall be used:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

10. Respondent shall send a notice of its penalty payment, including a copy of the check or proof of electronic payment, to:

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

and

Steven J. Viggiani
Senior Enforcement Counsel
U.S. EPA, Region I
Suite 1100 (Mailcode SEL)
One Congress Street
Boston, MA 02114-2023.

11. If Respondent fails to pay the full amount of the penalty by its due date, Respondent shall pay interest on the late amount, a quarterly nonpayment penalty, and any governmental enforcement expenses incurred to collect the late payment, all in accordance with Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5).

12. Respondent certifies that it shall not use any penalty payments made pursuant to this Section, or pursuant to Section VII below, in any way as, or in furtherance of, a tax deduction under federal, state or local law.

VI. INSTALLATION OF NEW VRU AND RETIREMENT OF BLADDER TANKS

13. By no later than December 31, 2008, Motiva shall purchase, install and commence full operation of a new carbon adsorption VRU at the Bridgeport terminal to control the terminal's VOC emissions from truck loading operations, thereby replacing the existing VRU and vapor bladder tanks.

14. In addition, by no later than December 31, 2008, or by no later than the date that the new VRU is fully operational, whichever is sooner, Motiva shall permanently cease using the Bridgeport terminal's two vapor bladder tanks for any purpose related to VOC vapor processing. Within 30 days after this cessation of operation, Motiva shall permanently disconnect all vapor-carrying pipes running into and out of the tanks.

15. Motiva shall perform the work required by this Section on the following schedule:

- (a) By no later than March 31, 2008, Motiva shall order a new, larger capacity carbon adsorption VRU ("new VRU") for the Bridgeport terminal;

(b) By no later than December 31, 2008, the new VRU shall commence full operation; and

(c) By no later than December 31, 2008, or by no later than the date that the new VRU becomes fully operational, whichever is sooner, the two vapor bladder tanks shall cease operation, and the tanks' vapor-carrying pipes shall be permanently disconnected within 30 days thereafter in accordance with Paragraph 14.

16. Within 15 days of completion of the performance milestones set out in Paragraphs 15(a) and (b) above, Motiva shall provide a brief written notice to EPA stating that the specified work has been completed. Within 45 days of completion of the milestone set out in Paragraph 15(c), Motiva shall provide a written notice of completion to EPA, together with a summary of the entire project's costs. These notices may be provided via email or letter to EPA's attorney at the address listed in Paragraph 10.

VII. STIPULATED PENALTIES

17. If Motiva should fail to comply with the provisions of Section VI above, the following stipulated penalties shall apply:

(a) If Motiva fails to order the new VRU by March 31, 2008, Motiva shall be liable for stipulated penalties of \$ 250 per day until the order is made;

(b) If Motiva fails to commence full operation of the new VRU by December 31, 2008, Motiva shall be liable for stipulated penalties of \$ 250 per day for the first 30 days of such failure, and \$ 500 per day for the 31st day and beyond; and

(c) If Motiva fails to permanently cease operation of the two vapor bladder tanks, and/or to permanently disconnect the tanks' vapor-carrying pipes, in accordance with the requirements of Paragraph 14, Motiva shall be liable for stipulated penalties of \$ 250 per day for each such failure until the tanks permanently cease operation and/or their vapor-carrying pipes are permanently disconnected.

The stipulated penalties described above shall be subject to the terms and procedures set out in Sections VIII and IX of this CAFO.

18. Stipulated penalties arising under this Section shall accrue for each violation. Separate stipulated penalties shall accrue simultaneously for separate violations. Stipulated penalties shall accrue regardless of whether EPA has notified Motiva that a violation has occurred.

19. Stipulated penalties shall become due and owing, and shall be paid by Motiva, not later than thirty (30) days after EPA issues Motiva a written demand for them. If any such demanded stipulated penalties are not paid in full when due, Motiva shall pay the unpaid penalties and interest thereon. Such interest shall accrue from the date the penalties were due, and shall be calculated in accordance with 28 U.S.C. § 1961.

20. EPA, in an unreviewable exercise of its discretion, may reduce or waive stipulated penalties otherwise due it under this CAFO.

21. Stipulated penalty payments shall be made by certified check, payable to the order of the "Treasurer, United States of America" and referencing the title of this action and the case docket number (CAA-01-2008-0031), together with a transmittal letter describing the calculation of the penalties (including any calculation of interest). In the alternative, stipulated penalties may be paid electronically in accordance with written instructions provided by Complainant. A copy of the check (or proof of electronic payment), together with the above-described transmittal letter, shall be sent to EPA Region 1 at both addresses listed in Paragraph 10 above.

22. Stipulated penalties shall continue to accrue as provided in Paragraph 17 above during any dispute resolution for stipulated penalties arising under Section X, with interest on accrued penalties payable and calculated at the rate in accordance with 28 U.S.C. § 1961, but need not be paid until the dispute is resolved by agreement between the parties or by a decision by EPA, at which time Motiva shall pay the accrued penalties determined to be owing, together with interest, to EPA within thirty (30) days of the effective date of the agreement or the receipt of EPA's decision.

23. The stipulated penalty provisions of this Section shall be in addition to all other rights reserved by Complainant or the United States pursuant to Section X below. Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek other remedies or sanctions available by virtue of any violation by Motiva of this CAFO or of the statutes, regulations or permits referenced within it.

VIII. FORCE MAJEURE

24. A "force majeure event" is defined as an event arising from circumstances entirely beyond Motiva's control that delays the performance of any of requirements set out in Section VI of this CAFO ("Section VI requirements"), despite Motiva's best efforts to avoid or minimize such delay. Force majeure events shall not include unexpected or increased costs, changed financial circumstances, change of ownership of Motiva, or the financial inability of Motiva to meet any of the Section VI requirements.

25. If any event occurs that delays, or that is expected to delay, the performance of any of the Section VI requirements, Motiva shall notify EPA in writing not more than twenty (20) days after the event or Motiva's knowledge of the event, whichever is earlier. The notice shall describe in detail the expected length of the delay, the cause(s) of the delay, the measures taken or planned to be taken by Motiva to prevent or minimize the delay, and the timetable for implementing these measures. Failure by Motiva to comply with the notice requirements of this Paragraph shall void the remainder of this Section as to the event causing the delay and shall constitute a waiver of Motiva's right to request a performance extension based on the event.

26. If EPA and Motiva agree that the actual or expected delay in performance of any of the Section VI requirements has been or will be caused by a force majeure event, the time for Motiva's performance shall be extended for a period no

longer than the delay resulting from the event. An extension of time for performing one requirement shall not automatically extend the time for performing other requirements.

27. If EPA does not agree that the actual or expected delay in performing the Section VI requirement has been or will be caused by a force majeure event, EPA will notify Motiva in writing of its decision, and any delays in the performance of the requirement shall not be excused.

28. If EPA and Motiva are unable to agree as to (a) whether Motiva's actual or expected delay in performing the Section VI requirement has been or will be caused by a force majeure event; (b) the number of days of delay that have been or will be caused by the force majeure event; or (c) whether Motiva has complied with the notice requirements of Paragraph 25 above, EPA's decision shall be final and binding on both parties unless Motiva seeks dispute resolution pursuant to Section IX below.

IX. DISPUTE RESOLUTION

29. If Respondent objects to any EPA action taken pursuant to Section VII, Respondent may employ the dispute resolution provisions set out in the remainder of this Section.

30. Respondent shall notify EPA in writing of its objection(s) within ten (10) days of Respondent's receipt of EPA's written demand for a stipulated penalty. Respondent's written notice ("Objection Letter") shall describe the substance of the objection(s) and shall invoke this Section of the CAFO.

31. Upon EPA's receipt of Respondent's Objection Letter, the parties shall conduct negotiations for up to twenty (20) business days, during which time Respondent has the right to meet with the Chief of the EPA's Regulatory Legal Office, or with his or her designee. By agreement of the parties, a neutral facilitator or mediator may assist in the conduct of this meeting. Respondent's obligation to pay the disputed stipulated penalty shall be suspended for the duration of this twenty-day period. If there is no agreement at the conclusion of this twenty-day period, but both parties agree that further negotiations would be fruitful, the parties may agree to continue dispute resolution (which can include more informal negotiations, mediation, or any other appropriate dispute resolution technique) for a period of time specified in writing. This written agreement to extend negotiations shall specify whether Respondent's obligation to pay the disputed stipulated penalty will be further suspended.

32. Any mutual resolution reached by the parties pursuant to Paragraph 31 shall be memorialized in writing, signed by both parties, and be incorporated as an enforceable provision of this CAFO. If the parties have not resolved the dispute by the conclusion of the dispute resolution period specified in Paragraph 31 (including any agreed-upon extensions), then Respondent shall abide by EPA's position regarding the stipulated penalty unless Respondent, within ten (10) days after the end of the period, notifies EPA in writing that it seeks further dispute resolution of the matter.

33. In this written notice, Respondent shall request a meeting with the Manager of the Enforcement Office in EPA's Office of Environmental Stewardship, in order for Respondent to make an oral presentation of its position. Respondent may in

its discretion provide further details regarding the substance of the dispute in this notice. Within fifteen (15) days of receiving Respondent's written notice, and after any requested meeting with Respondent, the Enforcement Office Manager or his or her designee shall issue a written decision to Respondent regarding the disputed issue. Such decision shall be final, incorporated as an enforceable provision of this CAFO, and followed by both parties.

X. EFFECT OF SETTLEMENT

34. This CAFO constitutes a settlement by Complainant of all claims for civil penalties under Section 113 of the CAA for the violations set out in Section IV above through December 21, 2007.

35. Nothing in this CAFO shall be construed to limit the authority of Complainant or the United States to undertake any action against Respondent for criminal activity, or to respond to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment. Complainant reserves all rights and remedies available to it to enforce the provisions of this CAFO, the CAA and its implementing regulations, and any other federal, state or local law or regulation.

36. This CAFO shall not relieve Respondent of its obligations to comply with all applicable provisions of federal or state law, and shall not be construed to be a ruling or determination regarding any issue related to any federal, state or local permit.

Except as provided in Paragraph 34 above, compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to environmental laws and regulations administered by EPA or by Connecticut environmental authorities.

37. Each party shall bear its own costs, disbursements and attorneys fees in connection with this enforcement action, and specifically waives any right to recover such costs, disbursements or fees from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

38. Respondent's undersigned representative certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to it.

For Complainant:

Sam Silverman, acting for
Susan Studlien, Director
Office of Environmental Stewardship
EPA Region 1

Date: 3-28-08

For Respondent:

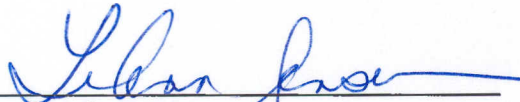
Jurgen V. Bohlen
Motiva Enterprises LLC

Date: March 13, 2008

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of this CAFO. The CAFO shall be effective immediately after signature and issuance by the Regional Judicial Officer.

SO SIGNED AND ISSUED:



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