

RECEIVED
REGIONAL COUNCIL
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
BEFORE THE ADMINISTRATOR

'99 MAR 15 2 24:13

In the Matter of:)	
)	Docket No. 5-CAA-028-98
Sun Refining and Marketing)	
Company)	
1819 Woodville Road)	
Toledo, Ohio 43697-0920)	
)	
Respondent.)	

CONSENT AGREEMENT AND CONSENT ORDER

CONSENT AGREEMENT

Complainant, the Acting Director, Air and Radiation Division, Region 5, United States Environmental Protection Agency ("U.S. EPA"), having filed the Administrative Complaint in this civil administrative action against Respondent, Sunoco, Inc. (R&M), f/k/a/ Refining and Marketing Company ("Sun"), Toledo, Ohio; and, having recognized that the resolution of this action and the entry of this Consent Agreement and Consent Order ("CACO") without further litigation is the most appropriate means of resolving this action, and is in the public interest;

NOW, THEREFORE, Complainant enters into this Consent Agreement with Respondent Sun resolving this matter without further litigation, as follows:

1. On August 11, 1998, pursuant to Section 113(d)(1) of the Clean Air Act (the "Act"), § 7413(d) (1), the United States Attorney General concurred in the U.S. EPA Administrator's determination that, in this administrative action, a penalty amount and period of time of violation otherwise exceeding the maximum limits identified in the Act (a "\$200,000" penalty, and

violations occurring “no more than 12 months prior to the initiation of the administrative action”), were appropriate.

2. On behalf of the Administrator, Complainant initiated this action for the assessment of a civil penalty pursuant to Section 113(d) of the Clean Air Act (the “Act”), 42 U.S.C. § 7413(d)(1), and Sections 22.01(a)(2) and 22.13 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (the “Administrator’s Rules”), 40 C.F.R. §§ 22.01(a)(2) and 22.13, by issuing against Respondent Sun an Administrative Complaint.

3. The Administrative Complaint alleged that:

Count I -- In violation of 40 C.F.R. § 52.1881(b)(xiv)(D), a provision of the CAA implementation plan in the State of Ohio limiting sulfur dioxide emissions at Sun’s Toledo, Ohio, facility, Sun emitted sulfur dioxide in excess of its allowed limit from fuel-fired steam generating units, identified as H-1910, P6S-1102 and P9S-1102, on 39 days during 1993 and 1994, thereby violating Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

Count II -- In violation of 40 C.F.R. § 61.12, a provision of the National Emission Standards for Hazardous Air Pollutants (“NESHAP”), Sun, prior to December 1997, had failed to secure access points to the water separator and cover of the screw conveyor system of its waste water treatment unit, at its Toledo, Ohio, facility, thereby failing to maintain its equipment for air pollution control in a manner consistent with good air pollution control practice for minimizing emissions, and violating Section 112(f)(4) of the CAA, 42 U.S.C. § 7412(f)(4).

Count III -- In violation of 40 C.F.R. §§ 61.347(b), 61.356(g) and 61.357(d)(8), provisions of the National Emission Standards for Benzene Waste Operations (“NESBWO”), Sun, prior to December 1997, had failed to conduct quarterly inspections of the seals, access hatches and other openings to the water separator of its Toledo, Ohio, facility’s wastewater treatment unit; had no records of any such quarterly inspections having been conducted; and had failed to address in any annual report it submitted to the Administrator its discovery of any problems that could result in the release of detectable emissions of benzene from the wastewater treatment unit, notwithstanding the conditions at its wastewater treatment unit identified in Count II, thereby violating Section 112(f) (4) of the CAA, 42 U.S.C. § 7412(f)(2).

Count IV -- In violation of 40 C.F.R. §§ 61.347(a)(1)(i)(A), 61.356(h) and 61.357(d)(8), provisions of the NESBWO, Sun, as of December 1997, at its Toledo, Ohio, facility, had failed to operate the water separator and maintain covers for openings designed for no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background, and had failed to conduct, document, and report to the Administrator the results of annual monitoring to assure that the covers and openings of its water separator were being maintained at such an operational design, thereby violating Section 112(f) of the CAA, 42 U.S.C. § 7412(f)(2).

Count V -- In violation of 40 C.F.R. § 61.347(a)(1)(i)(B), a provision of the NESBWO, Sun, prior to December 1997, at its Toledo, Ohio, facility, had failed to maintain each opening to its oil-water separator in a closed, sealed position (e.g., covered by a lid that is gasketed and latched) at all times that waste was in the oil-water separator, except when it was necessary to use the opening for waste sampling or removal, or for equipment inspection, maintenance or repair, thereby violating Section 112(f) of the CAA, 42 U.S.C. § 7412(f)(2).

The Administrative Complaint proposed that a civil penalty of \$305,800 be assessed for the violations alleged. A Motion to Amend the Administrative Complaint was filed, on March 4, 1999, to reduce the amount of civil penalty proposed to \$273,000.

4. Respondent Sun filed an Answer to Administrative Complaint and Request for Hearing, on or about October 15, 1998, denying the violations alleged in each count of the Administrative Complaint.

5. Between November 1998 and the present, the parties, represented by counsel, have conducted several settlement conferences in an effort to resolve this case.

6. Respondent Sun neither admits nor denies the violations alleged in the Administrative Complaint, issued in this matter on September 23, 1998.

7. Respondent Sun hereby waives its right to an administrative hearing in this matter.

8. Respondent Sun certifies that, to the best of its knowledge, information and belief, it is in compliance with the Act.

9. Respondent Sun consents to the issuance of this CACO, and agrees to pay a civil penalty of \$168,950 in resolution of this matter.

10. Complainant agrees to accept the payment of a civil penalty of \$168,950, under the terms provided for in this CACO, as an appropriate civil penalty on which to resolve this matter. Complainant's determination that \$168,950 is an appropriate civil penalty for which to resolve this action incorporates an analysis of all available evidence in consideration of the statutory penalty criteria set forth at Section 113(e) of the Act, 42 U.S.C. § 7413(e), as interpreted by the Administrator's CAA civil penalty policy, and the costs and expectations of further litigation. Specifically included in the analysis is a consideration of the fact that Respondent Sun has been in compliance with its CAA sulfur dioxide emission limits at H-1910, P6S-1102 and P9S-1102 since 1994. Also included in the analysis is a consideration that Respondent Sun was granted a waiver by the State of Ohio, which delayed the date at which it was required to meet the directives of the NESBWO from August 1, 1994, to August 1, 1995, thereby reducing the total days of violation; and that, on the specific facts of this case, the violations alleged in Counts II and V may be considered duplicative.

11. Within thirty (30) days of the effective date of this CACO (see Paragraph 20), Respondent Sun shall pay to the "Treasurer, United States of America," a civil penalty in the amount of \$168,950. Payment shall be made by certified check, or cashier's check, payable to the "Treasurer, United States of America," and shall be mailed to:

Region 5
U.S. Environmental Protection Agency
P.O. Box 70753
Chicago, IL 60673.

Respondent shall designate on the face of any check tendered under this CACO the name and docket number of this action. Respondent shall submit simultaneously to the following people a copy of any check tendered under this CACO:

Regional Hearing Clerk
Planning and Management Division (R-19J)
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590;

Kevin Vuilleumier
Air Enforcement and Compliance Assurance Branch (AE17J)
Air and Radiation Division
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590

Richard R. Wagner
Associate Regional Counsel
Office of Regional Counsel (C-14J)
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590;

12. Interest shall accrue on any amount overdue under the terms of this CACO at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. In addition, a late payment handling charge of \$15.00 will accrue on any payment made after the 30th day following the payment due date, with further late payment charges of \$15.00 accruing for each subsequent 30 day period over which any balance owing remains unpaid.

13. Respondent Sun shall not deduct any amount of the civil penalty it pays under the terms and conditions of this CACO for purposes of determining Respondent Sun's federal, state, or any local tax obligation.

14. The failure of Respondent Sun to make payment due and owing under this CACO may result in the referral of this matter to the U.S. Department of Justice for collection. The validity, amount and appropriateness of the civil penalty, as ordered paid under this CACO, is not subject to review in any collection proceeding. 15 U.S.C. § 2615(a)(4)(A).

15. This CACO shall not relieve Respondent Sun of its obligation to comply with all applicable provisions of any federal, state, county, or municipal statute, regulation, law, or ordinance, nor shall the CACO be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

16. This CACO constitutes a settlement by Complainant and full satisfaction of all claims for civil penalties for the violations alleged in the Administrative Complaint.

17. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CACO.

18. Respondent Sun consents to the terms of this CACO, and its issuance, without further notice.

19. This CACO constitutes the entire agreement between the parties resolving all issues in this docketed matter.

20. This CACO shall become effective on its filing with the Region 5 Hearing Clerk.

FOR SUN REFINING AND MARKETING COMPANY

Dated: MAR 10 1999



Bruce G. Fischer
Vice President, General Manager
Sunoco, Inc. (R&M)



FOR COMPLAINANT:

Dated: 3/12/99



Richard C. Karl
Acting Director, Air Division
Region 5
U.S. Environmental Protection Agency

FDR

IN THE MATTER OF SUN REFINING AND MARKETING COMPANY
DOCKET No. 5-CAA-028-98
CONSENT AGREEMENT AND CONSENT ORDER

CONSENT ORDER

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



David A. Ullrich
Acting Regional Administrator
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590



Date

CERTIFICATE OF MAILING

I, Shwanda Mayo, do hereby certify that a Consent Agreement and Consent Order Pursuant to the Clean Air Act were sent by Certified Mail, Return Receipt Requested to:

Bruce G. Fischer
Sunoco, Inc.
1819 Woodville Road
Toledo, Ohio 43697-0920

I also certify that copies of the Consent Agreement and Consent Order Pursuant to the Clean Air Act were sent by First Class Mail to:

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

on the 15th day of March 1999.

Shwanda Mayo
Shwanda Mayo
Secretary

P371 904 074
CERTIFIED MAIL RECEIPT NUMBER

US
POSTAL
SERVICE
PRODUCTION
RECEIVED

99 MAR 15 P2:13

RECEIVED
REGISTRATION