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EPA REGION VI

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	§	
	§	
NUSTAR REFINING, LLC	§	EPA DOCKET NO.
	§	CAA-06-2012-3444
	§	
	§	
	§	
	§	
BEXAR COUNTY, TEXAS	§	

CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 (Complainant), and NuStar Refining, LLC (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO) and consent to the entry of this CAFO.

I. CONSENT AGREEMENT

A. AGREEMENT AND CIVIL PENALTY

1. On January 31, 2012, Complainant commenced this proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), by filing a Complaint and Notice of Opportunity for a Hearing pursuant to 40 CFR §§ 22.13, and 22.34(b) (the Complaint).

2. The Complaint alleges that Respondent, as the owner and operator of a petroleum refinery in San Antonio, Texas (the Facility), is and at all relevant times was, subject to the general duties in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), including: (1) the duty to

identify hazards which may result from accidental releases of extremely hazardous substances using appropriate hazard assessment techniques; (2) the duty to design and maintain a safe facility taking such steps as are necessary to prevent releases; and (3) the duty to minimize the consequences of accidental releases which do occur.

3. The Complaint further alleges that Respondent violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), by failing to comply with one or more of its general duties with respect to an accidental release of jet fuel and a related fire that occurred in the Crude Unit at the Facility on November 30, 2011.

4. The Complaint proposes the assessment of an administrative penalty of $37,500.00 as authorized by Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 CFR Part 19. In determining the proposed penalty, Complainant considered the statutory penalty factors provided in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1).

5. On February 28, 2012, Respondent filed an Answer.

6. Respondent and Complainant have agreed to the terms and conditions of a settlement, which are provided in this CAFO and consent to entry of this CAFO to conclude this proceeding pursuant to 40 CFR § 22.18(b)(2) and (3).

7. For the purposes of this proceeding, Respondent neither admits nor denies the factual or legal allegations in the Complaint or referenced in this CAFO; however, Respondent admits the jurisdictional allegations in the Complaint, including the allegation that it is a Delaware Limited Liability Company doing business in the State of Texas and that it is a person under Section 302(e) of the CAA and within the meaning of CAA § 113(d), 42 U.S.C. § 7413(d).

8. 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.

9. Respondent 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 the Complaint.

10. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind Respondent to the terms and conditions of this CAFO.

11. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

12. This CAFO and any provision herein shall not be construed as an admission of liability in any criminal, civil or any administrative proceeding, except in an action or proceeding to enforce or seek compliance with this CAFO.

13. Respondent has agreed to pay, and consents to the assessment of, a civil penalty in the amount of twenty seven thousand five hundred dollars ($27,500.00).

14. Compliance with the terms and conditions of this CAFO, including payment of the assessed civil penalty, shall resolve only Respondent's liability for Federal civil penalties for the violations and facts alleged in the Complaint.

15. Within thirty (30) days of the effective date of this CAFO, the 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 (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) 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, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077 US EPA Fines & 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 = 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" with a phone number of (412) 234-4381.

PLEASE NOTE: Docket number CAA-06-2012-3444 shall be clearly typed on the check, or other method of payment, 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 docket numbers of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket numbers of the 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:

Jonathan Bull
Assistant Regional Counsel
Mail Code 6RC-ER
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

And to:

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 this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

16. 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.

17. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

18. Pursuant to 31 U.S.C. § 3717 and 40 CFR § 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 respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 CFR § 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, in accordance with 40 CFR § 13.11(b).

19. 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, consistent with 40 CFR § 13.11(c), 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. Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent as provided in 31 CFR § 901.9(d). Other penalties for failure to make a payment may also apply.

20. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to

pay persists. Such nonpayment penalty shall be 10 percent (10%) of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

B. RETENTION OF ENFORCEMENT RIGHTS

21. The 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.

22. 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 CFR Part 68.

23. 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, contaminants, hazardous substances on, 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.

C. COSTS

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

D. COMPLIANCE

25. Respondent hereby certifies that as of the date of the execution of this CAFO, that it has corrected the violations alleged herein at the Facility, and is now, to the best of its knowledge, in compliance with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

E. EFFECTIVE DATE

26. 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:

Date: June 25, 2012

Michael F. Pesch
Vice President
NuStar Refining LLC

FOR THE COMPLAINANT:

Date: 6-28-12

John Blevins
Director
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6

II. 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 CFR 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 the Complaint. 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 and pay a civil penalty in the amount of twenty seven thousand five hundred dollars ($27,500.00) following the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 CFR § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 7-2-12

Patrick A. Rankin
Regional Judicial Officer
U.S. EPA Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of July, 2012, the original and one 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 a true and correct copy of the CAFO was delivered to the following by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7010 2780 0002 4355 7674

Michael P. Dillinger, ESQ
NuStar Refining, LLC
2330 North Loop 1604 West
San Antonio, Texas 78248

Date: July 2, 2012

Yoni Jackson

U.S. EPA, Region 6
Dallas, Texas