UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

February 1, 2013

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7007 3020 0002 5102 8317

Christopher Newcomb, Esq.
Senior Corporate Counsel
CITGO Petroleum Corporation
135th Street and New Avenue
Lemont, Illinois 60439

Re: Consent Agreement and Final Order
In the Matter of CITGO Petroleum Corporation, EPA Docket No. CAA-06-2013-3317

Dear Mr. Newcomb:

Enclosed is a copy of the Consent Agreement and Final Order (CAFO) filed with the Regional Hearing Clerk in the matter referenced above. As provided in the CAFO, CITGO is required to pay the civil penalty of $270,000.00 within thirty (30) days of the effective date of the CAFO.

If you have any questions regarding this CAFO, please contact Jonathan Bull, Assistant Regional Counsel, at (214) 665-8597.

Sincerely,

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

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REGIONAL HEARING CLERK
EPA REGION VI

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	EPA DOCKET NO.
CITGO PETROLEUM CORPORATION	)	
	)	CAA 06-2013-3317
LAKE CHARLES REFINERY SULPHUR, LOUISIANA	)	

COMPLAINT, CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency (EPA), Region 6, and CITGO Petroleum Corporation, (Respondent) in the above-referenced proceeding, hereby agree to the simultaneous commencement and settlement of this matter through the issuance of this Complaint, Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO against Respondent pursuant to 40 CFR §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. For the purposes of this proceeding, Respondent admits the jurisdictional allegations 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 therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are alleged 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.

6. 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 the Respondent to the terms and conditions of this CAFO.

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

II. STATUTORY AND REGULATORY BACKGROUND

8. Section 112(r)(3) of the Clean Air Act, 42 U.S.C. § 7412(r)(3), requires the Administrator of the EPA (the "Administrator") to promulgate, not later than 24 months after November 15, 1990, an initial list of at least 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause, death, injury, or serious adverse effects to human health or the environment. This section provides that the list may be revised from time to time by the Administrator on the Administrator's own motion or by petition, and it further requires the Administrator to review the list at least every 5 years.

9. The substances listed by the Administrator are defined as "regulated substances" in Section 112(r)(2) of the Clean Air Act, 42 U.S.C. § 7412(r)(2).

10. Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), provides that the objective of regulations and programs authorized under Subsection 112(r) shall be to prevent the accidental release of regulated substances or other extremely hazardous substances and to minimize the consequences of any such release.

11. Section 112(r)(5) of the Clean Air Act, 42 U.S.C. § 7412(r)(5), requires the Administrator to establish a "threshold quantity" for each regulated substance that it lists pursuant to Section 112(r)(3), taking into account the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance which, as a result of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health for which the substance was listed.

12. EPA has promulgated the list of regulated substances and their corresponding threshold quantities in 40 CFR § 68.130.

13. Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), authorizes the Administrator to promulgate release prevention, detection, and correction requirements, which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design equipment, work practice and operational requirements to prevent accidental releases of regulated substances. EPA has promulgated such regulations, which are codified as the Chemical Accident Prevention Provisions in 40 CFR Part 68 (40 CFR §§ 68.1-68.220).

14. Under 40 CFR § 68.3, a "covered process" means a process that has a regulated substance present in more than a threshold quantity as determined under 40 CFR § 68.115.

15. Under 40 CFR § 68.10(a), an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under 40 CFR § 68.115, shall comply with the requirements of 40 CFR Part 68 no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under Sec. 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

16. Under 40 CFR § 68.12(a), an owner or operator of a stationary source subject to Part 68 requirements must submit a Risk Management Plan ("RMP") as provided in 40 CFR Part 68 Subpart G (§§ 68.150-68.185) that reflects all covered processes.

17. 40 CFR Part 68 provides general requirements applicable to owners or operators of a stationary source subject to Part 68. It also establishes requirements that apply to an owner or operator based on whether the stationary source operates processes subject to one of three "Programs"—Program 1, Program 2 and Program 3.

18. Under 40 CFR § 68.12(d), the owner or operator of a stationary source with a process subject to the "Program 3" requirements of the Part 68 regulations, as determined pursuant to 40 CFR § 68.10(d), must comply with the chemical accident prevention requirements of 40 CFR Part 68, Subpart D (Program 3 Prevention Program, at 40 CFR §§ 68.65-68.87).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

19. As alleged in this Complaint, Respondent is a person that has violated a requirement of the Clean Air Act. EPA has jurisdiction over this action, which is authorized by Sections 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(3) & 7413(d)(1)(B).

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

21. Respondent's principal place of business is located at 1293 Eldridge Parkway in Houston, Texas 77077.

22. Respondent is a "person" as that term is defined in Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

23. At all times relevant to this CAFO Respondent has been, and continues to be, the "owner" and "operator" of a petroleum refinery known as the CITGO Lake Charles Manufacturing Complex refinery, which is a "stationary source" as defined by Section 112(r)(2)(C) of the Clean Air Act.

24. The Facility is located at 1601 Highway 108 East in Sulphur, Calcasieu Parish, Louisiana 710665.

25. The North American Industrial Classification System Code for petroleum refineries, 32411, applies to the Facility.

26. At all times relevant to this CAFO, the Facility has had more than a threshold quantity of one or more regulated substances in a process as determined under 40 CFR § 68.115.

27. In the RMP it has filed for the Facility, Respondent reported thirty "covered processes" at the Facility subject to Program 3 requirements of Part 68, including but not limited to the following: crude atmospheric distillation, vacuum distillation, delayed coking, fluidized catalytic cracking, hydrotreaters, sulfuric acid alkylation, and catalytic reformers.

28. On or about May 24-28, 2010, EPA representatives inspected the Facility pursuant to Section 114 of the Clean Air Act, 42 U.S.C. §7414 ("the Inspection").

29. Respondent provided EPA with records of the status of its mechanical integrity inspections of Facility process equipment scheduled to be performed through May 25, 2010.

30. Based on these records, as of May 25, 2010, Respondent had failed to perform numerous inspections of process equipment, including piping systems and piping components subject to the mechanical integrity requirements in 40 CFR § 68.73, which were due to be performed between January 1, 2009 and May 25, 2010 under Respondent's mechanical integrity inspection schedule established by API Recommended Practice 570.

31. Section 113(d)(1) of the Clean Air Act, 42 U.S.C. § 7413(d)(1), authorizes EPA to initiate an administrative action when the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

32. EPA and the U.S. Department of Justice have jointly determined that it is appropriate for Complainant to initiate this administrative action for a civil penalty even though

the violations alleged herein occurred more than twelve (12) months prior to the initiation of this administrative action.

B. ALLEGED VIOLATION

Count 1: Failure to Inspect Process Equipment at Frequency Required by 40 CFR § 68.73(d)(3)

33. Paragraphs 1-32 are incorporated as if stated herein.

34. As the owner and operator of the Facility, Respondent is subject to the Program 3 requirements in 40 CFR Part 68 Subchapter D (40 CFR §§ 68.65-68.87), including mechanical integrity requirements for process equipment in 40 CFR § 68.73.

35. The mechanical integrity requirements in 40 CFR § 68.73(d) address inspection and testing of process equipment as follows: (1) inspections and tests shall be performed on process equipment; (2) inspection and testing procedures shall follow recognized and generally accepted good engineering practices; (3) the frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience; and (4) the owner or operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

36. Between January 1, 2009 and May 25, 2010, Respondent failed to perform numerous inspections of process equipment subject to 40 CFR § 68.73(d) at a frequency

In the Matter of CITGO Petroleum Corporation, EPA Docket Number CAA 06-2013-3317 consistent with applicable manufacturers' recommendations and good engineering practices, including API Recommended Practice 570.

37. Respondent's failure to perform these inspections at the required frequency violated 40 CFR § 68.73(d)(3).

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

38. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), which, as adjusted by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 CFR Part 19, authorizes EPA to assess a civil penalty of up to $32,500.00 per day for each violation of the Clean Air Act occurring after March 15, 2004 through January 12, 2009, and up to $37,500.00 per day for each violation of the Clean Air Act occurring after January 12, 2009. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, it is ORDERED that Respondent be assessed a civil penalty in the amount of **TWO HUNDRED SEVENTY THOUSAND AND 00/100 DOLLARS ($270,000.00)**.

39. 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-06-2013-3317 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, Texas 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.

40. 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.

41. 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.

42. 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. 40 CFR § 13.11(b).

43. 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. 40 CFR § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 CFR § 901.9(d). Other penalties for failure to make a payment may also apply.

44. Pursuant to Section 113(d)(5) of the Clean Air Act, 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 of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

45. This Consent Agreement is considered a "prior violation" for the purpose of demonstrating a "history of noncompliance" under the Clean Air Act Stationary Source Penalty Policy.

B. RETENTION OF ENFORCEMENT RIGHTS

46. 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.

47. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 CFR Part 68.

48. 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 Respondent's 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

49. 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

50. 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 that the Facility is now, to the best of Respondent's knowledge, in compliance with all applicable mechanical integrity inspection requirements in 40 CFR § 68.73(d)(3).

E. EFFECTIVE DATE

51. 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: 1/29/13

CITGO Petroleum Corporation

FOR THE COMPLAINANT:

Date: FEB 01 2013

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

V. FINAL ORDER

Pursuant to Section 113(d) of the Clean Air Act, 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 Consent Agreement. 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 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 2-5-13

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

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February, 2013, the original and one copy of the foregoing Complaint, 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 7007 3020 0002 5102 8317

Christopher Newcomb, Esq.
Senior Corporate Counsel
CITGO Petroleum Corporation
135th Street and New Avenue
Lemont, Illinois, 60439

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7003 0500 0003 0875 1971

CT CORPORATION SYSTEM
Registered Agent for CITGO Petroleum Corporation
350 N. St. Paul St., Ste. 2900
Dallas, TX 75201-4234 USA

Date: 2/5/2013

Lori Jackson

U.S. EPA, Region 6
Dallas, Texas