



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 16 2020

REPLY TO THE ATTENTION OF

VIA E-MAIL
RETURN RECEIPT REQUESTED

Tom Wood, Attorney at Law
Zenith Energy Terminals Holdings LLC
250 Mahoning Avenue
Cleveland, Ohio
Email: tom.wood@stoel.com

Dear Mr. Wood:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Zenith Energy Terminals Holdings LLC, docket no. CAA-05-2020-0010. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

March 16, 2020.

Pursuant to paragraph 26 of the CAFO, Zenith Energy Terminals Holdings LLC must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Josh Zaharoff, Attorney, (312) 886-4460.

Sincerely,

Sara Brunema

for

Sarah Marshall, Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Regional Hearing Clerk/via electronic mail
Josh Zaharoff/via electronic mail
Bob Hodanbosi, Ohio EPA Chief/via electronic mail
James Kavalec, Ohio EPA Environmental Manager/via electronic email
David Hearne, Cleveland Department of Public Health/via electronic email

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:	)	Docket No.	CAA-05-2020-0010
	)		
Zenith Energy Terminals Holdings LLC	)	Proceeding to Assess a Civil Penalty	
Cleveland, Ohio,	)	Under Section 113(d) of the Clean Air Act,	
	)	42 U.S.C. § 7413(d)	
Respondent.	)		
_____	)		

Consent Agreement and Final Order

Preliminary Statement



1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Zenith Energy Terminals Holdings LLC (Zenith), a Delaware limited liability company doing business in Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Under Section 111(b) of the CAA, 42 U.S.C. § 7411, EPA promulgated the New Source Performance Standards for Storage Vessels for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984 at 40 C.F.R. §§ 60.110b through 60.117b (NSPS Subpart Kb).

10. NSPS Subpart Kb, at 40 C.F.R. § 60.112b(a), applies to owners or operators of storage tanks with a design capacity greater than or equal to 151 cubic meters containing a volatile organic liquid (VOL) that, as stored, has a maximum true vapor pressure equal to or greater than 5.2 kiloPascals (kPa) but less than 76.6 kPa.

11. NSPS Subpart Kb, at 40 C.F.R. § 60.112b(a)(1)(ii), requires owners or operators of subject storage tanks to install a fixed roof and internal floating roof with one of three types of closure devices.

12. NSPS Subpart Kb, at 40 C.F.R. § 60.112b(a)(1)(ii)(B), includes the following option for the closure device on a subject storage tank: equip the internal floating roof with two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the internal floating roof.

13. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$48,192 per day of violation up to a total of \$385,535 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

14. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

15. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

16. Zenith owns and operates a bulk petroleum terminal at 250 Mahoning Avenue, Cleveland, Ohio (the Facility).

17. Zenith owns numerous storage tanks, including an internal floating roof storage tank labeled Tank 120 (or T013, in the Facility's Ohio Environmental Protection Agency Permit-to-Install and Operate) that stores gasoline.

18. Tank 120 was converted into a floating roof storage tank in March 2001 and was therefore modified after July 23, 1984.

19. Tank 120 has a design capacity greater than 151 cubic meters and is used to store gasoline, a VOL that, as stored, has a maximum true vapor pressure greater than or equal to 5.2 kPa but less than 76.6 kPa.

20. NSPS Subpart Kb applies to Tank 120.

21. Tank 120 utilizes two seals intended to form a continuous closure between the wall of the tank and the edge of the tank's internal floating roof.

22. During an August 29, 2018 Inspection, Facility personnel informed EPA inspectors that Tank 120 was storing gasoline. An EPA inspector then recorded forward looking infrared radiometer (FLIR) video of emissions from the roof vent of Tank 120.

23. Zenith performed its routine annual inspection of Tank 120 on February 7, 2019, and discovered a tear in the primary seal. Zenith indicated that it emptied the tank on February 11, 2019, and removed it from service.

24. Zenith violated NSPS Subpart Kb by failing to equip the internal floating roof of Tank 120 with two seals that form a continuous closure around the circumference of the tank.

Civil Penalty

25. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$20,000.

26. Within 30 days after the effective date of this CAFO, Respondent must pay a \$20,000 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045

Field Tag 4200 of the Fedwire message should
read: "D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

27. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Josh Zaharoff
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
Zaharoff.Josh@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

28. This civil penalty is not deductible for federal tax purposes.

29. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

30. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

31. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Zaharoff.Josh@epa.gov (for Complainant), and tom.wood@stoel.com (for Respondent).

32. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

33. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

34. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 32, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

35. Respondent certifies that it is complying fully with NSPS Subpart Kb.

36. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

37. The terms of this CAFO bind Respondent, its successors and assigns.

38. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

39. Each party agrees to bear its own costs and attorney's fees in this action.

40. This CAFO constitutes the entire agreement between the parties.

Zenith Energy Terminals Holdings LLC, Respondent

3/12/2020
Date

Shannon Caldwell
Shannon Caldwell
Vice-President of HSE and Regulatory
Zenith Energy Terminal Holdings LLC

United States Environmental Protection Agency, Complainant

3/16/2020
Date

Michael D. Harris
Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

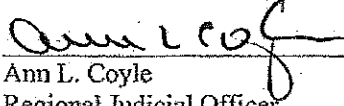
Consent Agreement and Final Order

In the Matter of: Zenith Energy Terminals Holdings LLC
Docket No. CAA-05-2020-0010

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

3/16/2020
Date


Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order

In the matter of: Zenith Energy Terminals Holdings LLC

Docket Number: CAA-05-2020-0010

CERTIFICATE OF SERVICE

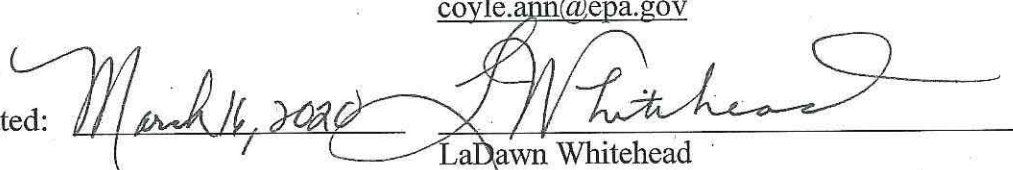
I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA 05 20 20 0010 which was filed on March 16, 2020 in the following manner to the following addressees:

Copy by E-mail to Respondent: Tom Wood, Attorney
tom.wood@stoel.com

Copy by E-mail to Attorney for Complainant: Josh Zaharoff
Zaharoff.Josh@epa.gov

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: March 16, 2020


LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5