

FILED  
LUCAS COUNTY

2004 MAR 8 P : 58

COMMON PLEAS COURT  
BERNIE QUILTER  
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS  
LUCAS COUNTY, OHIO**

**STATE OF OHIO  
JIM PETRO  
ATTORNEY GENERAL OF OHIO,**

**Plaintiff,**

**v.**

**SUNOCO, INC. (R & M),**

**Defendant.**

**CASE NO.**

02-2583

**JUDGE:**

**CONSENT ORDER AND FINAL  
JUDGMENT ENTRY**

Whereas, Plaintiff, the State of Ohio, by its Attorney General Jim Petro, at the written request of Christopher Jones, the Director of Environmental Protection, has filed a Complaint seeking injunctive relief and civil penalties from Defendant Sunoco, Inc. (R & M) ("Defendant") for violations of Revised Code ("R.C.") Chapter 3704 and the rules promulgated thereunder, and both parties have consented to the entry of this Order;

Whereas, this case arises out of certain emission reports filed with Ohio EPA by Defendant since 1996 concerning SO<sub>2</sub> emissions from the Amine Claus Sulfur Recovery Unit (emissions unit P012) during normal operations, the flaring of emissions, and emissions during

start-up, shutdown, turnaround, and malfunction conditions, and this complaint has been filed to enforce R.C. Chapter 3704 and the regulations adopted thereunder;

Whereas, plaintiff has filed an amended complaint with the consent of Defendant;

Whereas, the parties have engaged in good faith negotiations to resolve those claims, which negotiations and discussions included the compliance status with the NAAQS during the periods alleged in the complaint and several complex technical/engineering issues concerning operation of the SRU and flare during periods of malfunctions, start-ups, shutdowns and refinery turnarounds;

Whereas, Defendant, since 1988, has performed various pollution control activities, with the concurrence of Ohio EPA, at the SRU and the amine unit to improve reliability and reduce SO<sub>2</sub> emissions. Those activities include, among other things: (a) the addition of equipment pursuant to or in accordance with a 1988 Ohio EPA Administrative Order; (b) the addition of a new heat exchanger to accommodate the use of a special catalyst to further reduce emissions of SO<sub>2</sub> prior to the May 2, 1995, Order of this Court; and (c) implementing a project commonly known as the Amine Unit Reliability Project completed in 2000; (d) installation of a CEM on the outlet of the SRU; and development and implementation of a Preventative Maintenance and Malfunction Abatement Plan; and (e) submission of modeling studies prior to planned turnarounds in order to protect National Ambient Air Quality Standards and to assist in establishing operational conditions to minimize emissions, during those periods.

Whereas, Ohio EPA recognizes that the Amine Unit Reliability Project, in conjunction with the above enumerated improvements, currently appears to be sufficient and adequate pollution control measures to meet the requirements of O.A.C. 3745-18-54(O)(9); and

Whereas, this Consent Order has been agreed to by Defendant in the interest of settlement and the parties agree that the terms and conditions herein, including these whereas clauses, are limited solely to this case and have no application to or effect on any other case;

Now, therefore, without the trial, admission, or determination of any issue of fact or law, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

### I. DEFINITIONS

- 1 As used in this Order, the following terms are defined as follows:
  - a. "Air contaminant source" or "source" has the same meaning as set forth in R.C. 3704.01(C) and Ohio Administrative Code ("O.A.C.") 3745-31-01(D) and 3745-35-01(B)(1).
  - b. "Amine Unit" means process equipment which is used to remove hydrogen sulfide (H<sub>2</sub>S) from refinery fuel gas prior to use as fuel gas throughout the refinery and to produce propane-propylene.
  - c. "Day" means a specific day, as opposed to a rolling, 24-hour period, commencing at midnight on any given day, and ending at 11:59 p.m. on that same day.
  - d. "Director" means the Director of Ohio EPA.
  - e. "Facility" means Defendant's facility and all related operations located at 1819 Woodville Road, Toledo, Lucas County, in Ohio.
  - f. "Flare" means emissions unit P009 (the purpose of this unit is to incinerate refinery waste gas, prior to discharge into the ambient air). The

flare is an emergency release device employed during emergency conditions, such as upsets and malfunctions, or planned shutdowns of refinery units.

g. "Ohio EPA" means the Ohio Environmental Protection Agency.

h. "Permit to Install" or "PTI" has the same meaning as set forth in O.A.C. Chapter 3745-31

"Permit to Operate" or "PTO" has the same meaning as set forth in O.A.C. Chapter 3745-35.

"Sour water stripper" is a device for the removal of H<sub>2</sub>S and ammonia from certain refinery wastewaters prior to discharge.

k. "SRU" means emissions unit P012, and as generally defined in O.A.C. 3745-18-01 (sulfur recovery plant).

"Title V Permit" has the same meaning as set forth in O.A.C. Chapter 3745-77.

## **II. JURISDICTION AND VENUE**

2. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim for which relief can be granted pursuant to R.C. Chapter 3704. Venue is proper in this Court.

## **III. PERSONS BOUND**

3. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and, to the extent provided by Rule 65(D) of the Ohio Rules of Civil

Procedure, their officers, agents, servants, employees, attorneys, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise. Defendant has agreed to enter into this Order on Consent and expressly denies the facts alleged in Plaintiff's complaint and denies any violation of law

#### **IV. RELEASE OF CLAIMS, SATISFACTION OF LAWSUIT, AND RESERVATION OF RIGHTS**

4. Compliance with the provisions of paragraph 10 of this Consent Order shall constitute full release and satisfaction of any civil liability of Defendant to the Plaintiff for the claims arising out of the factual circumstances stated in the complaint for the periods of time identified therein.

5 This Consent Order shall not be construed to limit the authority of the Plaintiff to seek relief for violations not alleged in the Complaint, nor shall this Consent Order bar the State from bringing any action against the Defendant for any violations which occur after the entry of this Order. Nothing in this Consent Order shall be construed to relieve Defendant of its obligations to comply with other applicable federal, state or local statutes, regulations, or ordinances

#### **V. INJUNCTIVE RELIEF**

6 Defendant agrees and is hereby permanently enjoined to fully comply with R.C. Chapter 3704 and the regulations promulgated thereunder with respect to SO<sub>2</sub> for all air contaminant sources at the Facility. Further, Defendant agrees and is enjoined to comply with all terms and conditions of all Permits to Install and Title V Permits that are issued to it for air contaminant sources at the Facility.

7. Defendant agrees and is hereby enjoined and ordered to continue to properly operate and maintain its Amine Claus Sulfur Recovery Unit (emissions unit P012) in compliance with O.A.C. 3745-18-54(O)(9).

8. In order to minimize emissions during unplanned start-ups, shutdowns and malfunctions, Defendant shall continue to operate and maintain emissions unit P012, the amine unit, and the sour water stripper in accordance with the provisions of the Preventative Maintenance Malfunction and Abatement Plan ("PMMAP") referenced in the Consent Order entered on May 2, 1995, including any subsequent amendments. Nothing in this Consent Order is intended to abrogate or override the provisions of the Ohio malfunction rule expressed in O.A.C. 3745-15-06, nor to abrogate or override the provisions of the May 2, 1995, Consent Order.

9. For instances where planned start-ups and shutdowns of emissions unit P012, the amine unit or sour water stripper result in the flaring of emissions, Defendant shall submit to Ohio EPA prior to those events an atmospheric modeling study (in accordance with the modeling protocol established by virtue of the May 2, 1995, Consent Order) and restricted refinery operational parameters during such planned event 30 days prior to each such event. Defendant shall operate the refinery in accordance with the restricted operational parameters during each such event.

## **VI CIVIL PENALTY**

10. Within forty-five (45) days of entry of this Consent Order, Defendant shall pay a civil penalty in the amount of four hundred seventy-five thousand dollars (\$475,000) to the State of Ohio by delivering a certified check in that amount, payable to the order of "Treasurer, State

of Ohio,” to Linda Jennings or her successor, Administrative Assistant, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. Plaintiff, in its discretion, may delay payment of this amount if Defendant submits to Plaintiff an environmental control project that Plaintiff agrees comports with the requirements for supplemental environmental projects and agrees that this amount may be reduced.

## **VII. FORCE MAJEURE**

11 If any event occurs that causes or may cause a delay in Defendant’s compliance with any requirement of this Order, Defendant shall notify Ohio EPA, in writing, within fourteen (14) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

12 In any action by Plaintiff to enforce any of the provisions of this Order, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the parties that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an action to enforce the terms and conditions of this Order, if any, is commenced by Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant shall rest with the Defendant. Failure by Defendant to comply with the notice requirements of paragraph 11 shall render this

paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Order based on such incident. This paragraph does not modify the obligations or rights under O.A.C. 3745-15-06.

#### **VIII. RETENTION OF JURISDICTION**

13. The Court will retain jurisdiction of this action for purposes of enforcing Consent Order, and may terminate this Order at any time on mutual motion by the parties. confidentiality order issued herein shall remain in full force and effect.

#### **IX. COURT COSTS**

14. Defendant is enjoined and ordered to pay all court costs of this action.

#### **X. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

15. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

#### **XI. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

16. Each signatory for the Defendant represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

**XII. DISCLAIMER**

17. Defendant has agreed to the terms of this Order solely in the interest of settlement and without admitting that it has violated any law, regulation, or other applicable legal requirements; this agreement and entry of this Order is not and may not be construed as a finding of violation of any law, regulation, or other applicable legal requirement.

**IT IS SO ORDERED**

3/18/04  
**DATE**

James D. Bates  
**JUDGE, COURT OF COMMON PLEAS  
LUCAS COUNTY**

**APPROVED:**

**SUNOCO, INC. (R & M)**

[Signature]  
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[Signature]  
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