UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the matter of: NOCO Energy Corp., Respondent In a proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)	**CONSENT AGREEMENT** **AND** **FINAL ORDER** **CAA-02-2015-1207**

PRELIMINARY STATEMENT

This Consent Agreement and Final Order (CAFO) simultaneously commences and concludes an administrative penalty proceeding brought by the Complainant, the Director of the Division of Enforcement and Compliance Assistance for the U.S. Environmental Protection Agency (EPA) Region 2, against Respondent NOCO Energy Corporation (NOCO or Respondent), pursuant to Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and Rules 22.13(b) and 22.18(b) of EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (the Consolidated Rules), 40 C.F.R. Part 22.

The Consent Agreement is signed by the Complainant and Respondent, and the Final Order is issued by the Region 2 Regional Administrator. As set forth in the "Jurisdictional Allegations" section of the Consent Agreement, the Complainant is duly authorized to sign consent agreements and the Regional Administrator is duly authorized to issue final orders.

CONSENT AGREEMENT

General Provisions

1. EPA has determined that NOCO violated the CAA and its implementing regulations at its Tonawanda Facility (Facility) in Tonawanda, New York. More specifically, EPA has determined that NOCO violated 40 C.F.R. Part 63, Subpart A (Part 63 National Emissions Standards for Hazardous Air Pollutants General Provisions), 40 C.F.R. Part 63, Subpart BBBBBB (Gasoline Distribution NESHAP), each of which were promulgated by EPA pursuant to Sections 112 and 114 of the CAA, as well as provisions of the Facility's Title V Permit issued pursuant to Title V of the Act and 6 NYCRR Part 201 of the New York State Codes, Rules and Regulations. The specific violations found by EPA are set forth below in the section of this Consent Agreement entitled "Conclusions of Law."

2. Complainant and Respondent enter into this Consent Agreement and propose the attached Final Order so as to resolve the violations alleged in the "Conclusions of Law" section of this Consent Agreement. Pursuant to the Consolidated Rules 22.13(b) and 22.18(b), the issuance of the Consent Agreement and Final Order serves to simultaneously commence and conclude the agency's administrative penalty proceeding for those violations.

3. For the purposes of this proceeding, and to avoid the expense of protracted litigation, Respondent:

a. admits the jurisdictional allegations set forth below in the section of this Consent Agreement entitled "Jurisdictional Allegations;"

b. neither admits nor denies the findings of fact set forth in the section of his Consent Agreement entitled "Findings of Fact,"

c. consents to the payment of the civil penalty specified in the section of this Consent Agreement entitled "Settlement," on the terms specified in that section;

d. consents to the issuance of the attached Final Order; and

e. waives any right to contest the allegations set forth in the "Conclusions of Law" section of this Consent Agreement and any right to appeal the attached Final Order.

Jurisdictional Allegations

4. Section 113(d) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Sections 112 and 114 of the Act.

5. Section 302(e) of the CAA provides that whenever the term "person" is used in the Act, the term includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

6. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to the Complainant, the Director of the Division of Enforcement and Compliance Assistance, through the Region 2 Regional Administrator, the authority to (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

7. Pursuant to EPA Delegation of Authority 7-6-C, the Administrator has delegated to the Region 2 Regional Administrator the authority to execute CAA Section 113(d) Final Orders.

8. Pursuant to Section 113(d), the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty proceeding. Specifically, on August 4, 2011, the United States Department of Justice (DOJ) granted EPA's request for a waiver of the CAA Section 113(d) 12-month time limitation on EPA's authority to initiate an administrative penalty action in this matter.

9. Respondent is a "person" within the meaning of Section 302(e) of the Act.

10. Respondent is an "owner or operator" of the Facility, as that term is used in CAA Section 112(a)(9) and 40 C.F.R. § 63.2.

11. The Facility is a "stationary source," as that term is used Section 112(a)(3) of the Act and 40 C.F.R. § 63.2.

12. The Facility is an "area source" of hazardous air pollutants (HAPs), as that term is used in Section 112(a)(2) of the Act and 40 C.F.R. § 63.2.

13. The Facility is subject to a Title V Operating Permit that was issued to NOCO pursuant to 6 NYCRR 201, 40 C.F.R. Part 70, and Title V of the Act.

Legal Background

CAA Sections 112 and 114

14. Section 112 of the Act requires the EPA Administrator to: (i) publish a list of HAPs, (ii) publish a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each such category and subcategory.

15. Emissions standards promulgated pursuant to Section 112 are commonly known as NESHAPs. NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61. NESHAPs promulgated under the CAA as amended in 1990 are set forth in

40 C.F.R. Part 63. Part 63 NESHAPs are sometimes known as MACT standards, because Section 112(d) of the CAA, as amended in 1990, directs EPA to promulgate emissions standards based on the maximum achievable control technology (MACT).

16. Section 112(a) of the Act contains definitions relevant to Section 112. More specifically:

a. Section 112(a)(1) of the Act defines "major source" as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

b. Section 112(a)(2) of the Act defines "area source" as any stationary source of hazardous air pollutants that is not a major source."

c. Section 112(a)(3) of the Act defines "stationary source" as any building, structure, facility or installation which emits or may emit any air pollutant.

d. Section 112(a)(9) defines "owner or operator" as any person who owns, leases, operates, controls or supervises a stationary source.

17. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.

18. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Sections 111 and 112 of the Act.

The Part 63 General Provisions

19. On March 16, 1994, pursuant to Sections 112 and 114 of the Act, EPA promulgated the "National Emission Standards for Hazardous Air Pollutants for Source Categories," 40 C.F.R. Part 63, Subpart A, §§ 63.1 – 63.16, previously defined as Part 63 NESHAP General Provisions.

20. 40 C.F.R. § 63.1(a)(4) provides that each relevant standard in 40 C.F.R. Part 63 must identify explicitly whether each provision in the Part 63 NESHAP General Provisions is or is not included in such relevant standard.

21. Table 3 of 40 C.F.R. Part 63, Subpart BBBBBB indicates, among other provisions, that 40 C.F.R. §§ 63.1, 63.2, and 63.13 of the Part 63 NESHAP General Provisions apply to the Gasoline Distribution NESHAP.

22. 40 C.F.R. § 63.1(b) provides that the provisions of 40 C.F.R. Part 63 apply to the owner or operator of any stationary source that (i) emits or has the potential to emit any HAP listed in or pursuant to Section 112(b) of the Act, and (ii) is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to 40 C.F.R. Part 63.

23. 40 C.F.R. § 63.1(c) provides that if a relevant standard has been established under 40 C.F.R. Part 63, the owner or operator of an affected source must comply with the provisions of that standard and of the Part 63 NESHAP General Provisions, as provided in 40 C.F.R. § 63.1(a)(4).

24. 40 C.F.R. § 63.2 contains the following definitions, among others:

a. "owner or operator" is defined as any person who owns, leases, operates, controls, or supervises a stationary source.

b. "affected source," for the purposes of 40 C.F.R. Part 63, is defined as the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c) source

c. category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the Act. Each relevant standard will define the "affected source," as defined in 40 C.F.R. § 63.2 unless a different definition is warranted.

d. "existing source" is defined as any affected source that is not a new source.

e. "stationary source" is defined as any building, structure, facility, or installation that emits or may emit any air pollutant.

25. 40 C.F.R. § 63.13 provides that all requests, reports, applications, submittals, and other communications to the Administrator pursuant to Part 63 must be submitted to the appropriate Regional Office of the U.S. Environmental Protection Agency indicated in the list of EPA Regional Offices provided.

The Gasoline Distribution NESHAP

26. On January 10, 2008, under the authority of Sections 112 and 114 of the Act, EPA promulgated the "National Emissions Standards for Hazardous Air Pollutants for Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities," 40 C.F.R. Part 63, Subpart BBBBBB, 40 C.F.R. §§ 63.11080 – 63.11100, previously defined as the Gasoline Distribution NESHAP. The Gasoline Distribution NESHAP was amended on January 24, 2011. See 76 Fed. Reg. 4156. The requirements cited in this Consent Agreement are substantively the same as the requirements promulgated in 2008 except as otherwise noted.

27. 40 C.F.R. § 63.11081(a) provides that the affected source to which the Gasoline Distribution NESHAP applies is each area source bulk gasoline terminal (that is not subject to the control requirements of 40 C.F.R. Part 63, Subparts R or CC), pipeline breakout station (that is not subject to the control requirements of 40 C.F.R. Subpart R), pipeline pumping station, and bulk gasoline plant.

28. 40 C.F.R. § 63.11100 defines "bulk gasoline terminal" as any gasoline storage and distribution facility that receives gasoline by pipeline, shop or barge, or cargo tank and has a gasoline throughput of 20,000 gallons per day or greater. The definition also provides that gasoline throughput must be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State, or local law and discoverable by the Administrator and any other person.

29. 40 C.F.R. § 63.11100, as amended, defines "gasoline" as any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater, which is used as fuel for internal combustion engines.

30. 40 C.F.R. § 63.11083(b) provides that owners and operators of an existing affected source must comply with the Gasoline Distribution NESHAP no later than January 10, 2011.

31. 40 C.F.R. § 63.11086(e) provides that each owner and operator of a Gasoline Distribution NESHAP affected source must submit an Initial Notification to EPA and NYSDEC by May 9, 2008 as specified in 40 C.F.R. § 63.13.

32. 40 C.F.R. § 63.11086(f) provides that each owner and operator of a Gasoline Distribution NESHAP affected source must submit to EPA and NYSDEC a Notice of Compliance Status report by the compliance date specified in 40 C.F.R. § 63.11083, which is January 10, 2011.

33. 40 C.F.R. § 63.11087(b) provides that, for storage tanks at a facility that is a bulk gasoline terminal, owners and operators must comply with the Gasoline Distribution NESHAP by the applicable dates specified in 40 C.F.R. § 63.11083, except that storage vessels equipped

with floating roofs and not meeting the requirements of 40 C.F.R. § 63.11087(a) must be in compliance at the first degassing and cleaning activity after January 10, 2011 or by January 10, 2018, whichever is first.

34. 40 C.F.R. § 63.11092(b), as amended[1], provides that each owner and operator of a bulk gasoline terminal subject to the Gasoline Distribution NESHAP must install, calibrate, certify, and maintain, according to the manufacturer's specifications, a continuous monitoring system (CMS) while gasoline vapors are displaced to the vapor processor systems, as specified in 40 C.F.R. §§ 63.11092(b)(1) through 63.11092(b)(5).

35. 40 C.F.R. § 63.11092(b)(1)(i)(A), as amended[2], provides that each owner and operator of a bulk gasoline terminal subject to the Gasoline Distribution NESHAP must install a continuous emissions monitoring system (CEMS) capable of measuring organic compound concentration in the exhaust air stream.

36. 40 C.F.R. § 63.11092(b)(1)(i)(B), as amended[3], provides that as an alternative to 40 C.F.R. § 63.11092(b)(1)(i)(A), owners and operators may choose to meet the requirements listed in 40 C.F.R. §§ 63.11092(b)(1)(i)(B)(*1*) and (*2*), which are as follows:

> (*1*) Carbon adsorption devices shall be monitored as specified in 40 C.F.R. §§ 63.11092(b)(1)(i)(B)(*1*)(*i*),(*ii*), and (iii).
>
> (*i*) Vacuum level must be monitored using a pressure transmitter installed in the vacuum pump suction line, with the measurements displayed on a gauge that can be visually observed. Each carbon bed must be observed during one complete regeneration cycle on each day of operation of the loading rack to determine the maximum vacuum level achieved.
>
> (*ii*) Conduct annual testing of the carbon activity for the carbon in each carbon bed. Carbon activity must be tested in accordance with the butane working capacity test of the

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[1] 40 C.F.R. § 63.11092(b) was amended so that the originally promulgated introductory paragraph (b) no longer appears.

[2, 3] 40 C.F.R. § 63.11092(b)(1) was also amended so that the originally promulgated introductory paragraph (b)(1) no longer appears.

American Society for Testing and Materials (ASTM) Method D 5228–92 (incorporated by reference, see 40 C.F.R. § 63.14), or by another suitable procedure as recommended by the manufacturer.

(*iii*) Conduct monthly measurements of the carbon bed outlet volatile organic compounds (VOC) concentration over the last 5 minutes of an adsorption cycle for each carbon bed, documenting the highest measured VOC concentration. Measurements must be made using a portable analyzer, or a permanently mounted analyzer, in accordance with 40 C.F.R. Part 60, Appendix A–7, EPA Method 21 for open-ended lines.

(*2*) Develop and submit to the Administrator a monitoring and inspection plan that describes the owner or operator's approach for meeting the requirements in 40 C.F.R. §§ 63.11092(b)(1)(i)(B)(*2*)(*i*) through (*v*).

(*i*) The lowest maximum required vacuum level and duration needed to assure regeneration of the carbon beds shall be determined by an engineering analysis or from the manufacturer's recommendation and must be documented in the monitoring and inspection plan.

(*ii*) The owner or operator must verify, during each day of operation of the loading rack, the proper valve sequencing, cycle time, gasoline flow, purge air flow, and operating temperatures. Verification must be through visual observation, or through an automated alarm or shutdown system that monitors system operation. A manual or electronic record of the start and end of a shutdown event may be used.

(*iii*) The owner or operator must perform semi-annual preventive maintenance inspections of the carbon adsorption system, including the automated alarm or shutdown system for those units so equipped, according to the recommendations of the manufacturer of the system.

(*iv*) The monitoring plan developed under 40 C.F.R. § 63.11092(b)(1)(i)(B)(*2*) of this section must specify conditions that would be considered malfunctions of the carbon adsorption system during the inspections or automated monitoring performed under 40 C.F.R. §§ 63.11092(b)(1)(i)(B)(*2*)(*i*) through (*iii*), describe specific corrective actions that will be taken to correct any malfunction, and define what the owner or operator would consider to be a timely repair for each potential malfunction.

(*v*) The owner or operator must document the maximum vacuum level observed on each carbon bed from each daily inspection and the maximum VOC concentration observed from each carbon bed on each monthly inspection as well as any system malfunction, as defined in the monitoring and inspection plan, and any activation of the automated alarm or shutdown system with a written entry into a log book or other permanent form of record. Such record must also include a description of the corrective action taken and whether such corrective actions were taken in a timely manner, as defined in the monitoring and inspection plan, as well as an estimate of the amount of gasoline loaded during the period of the malfunction.

CAA Title V and New York State's Title V Operating Permit Program

37. Title V of the CAA consists of Sections 501 to 507 of the Act, 42 U.S.C. §§ 7661-7661f.

38. In general, Title V of the CAA requires each "major source" to obtain an operating permit setting forth all of the air pollution requirements that apply to that source, and also provides for the creation of State and Federal programs to issue such permits.

39. Section 501(a) of the CAA provides that the term "major source," as used in Title V of the CAA, means any stationary source or group of stationary sources located within a contiguous area and under common control that is a major source as defined in either Section 112 of the Act or Section 302 of the Act or Part D of subchapter I of the Act.

40. Section 502(a) of the Act provides that after the effective date of any permit program approved or promulgated pursuant to Title V of the Act, it shall be unlawful for any person to violate any requirement of a permit issued under Title V of the Act or to operate a Title V affected source, including a major source or any other source (including an area source) subject to standards or regulations under Section 112 of the Act, except in compliance with a permit issued by a permitting authority under Title V of the Act.

41. Pursuant to Section 502(b) of the Act, EPA promulgated 40 C.F.R. Part 70, State Operating Permit Program regulations, and 40 C.F.R. Part 71, Federal Operating Permit Program regulations.

42. Section 502(d) of the Act required each State to develop and submit to the Administrator a permit program meeting the requirements of Title V of the Act.

43. Pursuant to Section 502(e) of the Act, EPA maintains its authority to enforce permits issued by a State.

44. Section 503(a) of the Act provides that any source specified in Section 502(a) of the Act shall become subject to a permit program and shall be required to have a permit to operate.

45. Section 504(a) of the Act directs that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable State Implementation Plan (SIP).

46. In accordance with Section 502(d)(1) of the Act, New York State developed and submitted 6 NYCRR Chapter III Part 201 (the New York Title V Operating Permit Program), to meet the requirements of Title V of the Act and 40 C.F.R. Part 70, promulgated pursuant to Section 502(b) of the Act.

47. EPA granted interim approval of the New York State (NYS) Title V Operating Permit Program on December 9, 1996, 61 *Fed. Reg.* 57589 (November 7, 1996), and granted full approval to the program on February 5, 2002, 67 *Fed. Reg.* 5216 (February 5, 2002).

48. 40 C.F.R. § 70.7(f)(i) provides that a Title V Permit must be reopened and revised to, among other things, include additional applicable requirements under the Act that become applicable to a major Part 70 source with a remaining permit term of 3 or more years and that such reopenings must be completed no later than 18 months after promulgation of the applicable requirement.

49. 6 NYCRR 201-6.5(i), a provision in the NYS Title V Operating Permit Program, provides that if additional applicable requirements under the Act become applicable where a permit's remaining term is three or more years, a reopening must be completed no later than 18 months after promulgation of an applicable requirement.

50. On May 22, 2007, New York State Department of Conservation (NYSDEC) issued a New York State Title V Operating Permit to the NOCO's Facility which includes Item K: 6 NYCRR 201-6.5(i) "Reopening for Cause," which describes the circumstances where the Title V Operating permit should be reopened and revised.

Findings of Fact

51. Respondent is the owner and operator of the Facility.

52. NOCO's facility is located at 700 Grand Island Boulevard in Tonawanda, New York (Facility).

53. On March 9, 2011, EPA inspectors and a NYSDEC inspector conducted a Full Compliance Evaluation (FCE) at NOCO to determine compliance with CAA regulations.

54. The FCE indicates that the Facility:

a. Stores and distributes liquid petroleum products that contain regulated air pollutants and has a storage capacity of over one million barrels;

b. Receives gasoline product by truck, rail, interstate pipeline or vessel (barge or ship via the Niagara River); and

c. Has seven (7) vertical storage tanks that store gasoline, aviation gasoline, ethanol or other liquid products.

55. The Facility has a NYSDEC Title V Operating permit with an expiration date of May 21, 2012.

56. The Facility's Title V Operating permit indicates that the Facility has a gasoline throughput of greater than 20,000 gallons per day.

57. The Facility's Title V Operating permit indicates that the Facility is an area source of HAPs.

58. During the FCE, the EPA inspectors conducted a document review which included NOCO's:

a. Annual compliance certifications;

b. Semi-annual compliance certifications;

c. Emissions reports/calculations;

d. Weekly Vapor Recovery Unit (VRU) inspection records; and

e. DOT regulation compliance records for trucks.

59. EPA found that the Gasoline Distribution NESHAP requirements were not included in NOCO's Title V Operating Permit.

60. During the document review, EPA asked NOCO's representatives if they had submitted an Initial Notification Letter and Notice of Compliance Status report to comply with the Gasoline Distribution NESHAP (40 C.F.R. 63, Subpart BBBBBB). NOCO's representatives stated that they were not familiar with the regulation. EPA provided NOCO with a copy of the Gasoline Distribution NESHAP regulation.

61. NOCO is currently operating a Vapor Recovery Unit (VRU) carbon bed adsorption system during loading of gasoline into tank trucks. During the inspection, the EPA inspectors observed that the carbon bed adsorption system is not equipped with any continuous emissions monitoring systems (CEMS) to measure organic compound concentration in the exhaust air stream.

Conclusions of Law

Based on the Findings of Fact set forth above, EPA reaches the following Conclusions of Law:

General Conclusions

62. The Respondent is a "person," within the meaning of Section 302(e) of the Act.

63. The Facility is an existing "affected source," within the meaning of 40 C.F.R. § 63.2.

64. As described in Paragraphs 54 and 56 above, the Facility is a "bulk gasoline terminal," within the meaning of 40 C.F.R. § 63.11100.

65. As described in Paragraph 57 above, the Facility is an "area source," within the meaning of Section 112(b) of the CAA, which emits less than 25 tons per year (TPY) of combined HAPs and less than 10 TPY of individual HAPs.

66. The Respondent is an "owner" and an "operator," within the meaning of 40 C.F.R. § 63.2, of a facility, which as of January 10, 2011, is subject to the Gasoline Distribution NESHAP for area source gasoline distribution bulk terminals, bulk plants, and pipeline facilities, and the Facility continues to be subject to the Gasoline Distribution NESHAP as amended.

Specific Violations

67. As described in Paragraph 59 above, at the time of the FCE, the Facility's Title V Operating permit did not contain the Gasoline Distribution NESHAP requirements. Respondent was required to submit a permit renewal application, including the Gasoline Distribution NESHAP requirements, as required by 6 NYCRR 201-6.5(i) of the NYS Title V Operating Permit Program and Item K of the Facility's Title V Operating Permit. A new permit has not yet been issued by NYSDEC.

68. As described in Paragraph 60 above, the Respondent did not submit to EPA and/or NYSDEC the Initial Notification Letter, required by 40 C.F.R. § 63.11086(e) and the Notice of Compliance Status report, required by 40 C.F.R. § 63.11086(f).

69. As described in Paragraph 61 above, the Respondent operated a VRU carbon bed adsorption system that is not monitored with CEMS, as required by 40 C.F.R. § 63.11092(b)(1)(i)(A) or did not develop and submit to EPA an alternative monitoring and inspection plan which is required by 40 C.F.R. § 63.11092(b)(1)(i)(B) as a provision that must be met in order to comply with, among other provisions, 40 C.F.R. § 63.1092(b)(1(i)(B)(2) in lieu of 40 C.F.R. § 63.11092(b)(1)(i)(B)(1).

70. The violations of the Gasoline Distribution NESHAP described in Paragraphs 68 and 69 above are violations of Section 112(i)(3)(A) of the CAA.

Settlement

71. Pursuant to Section 113(d) of the Act, Respondent shall pay a civil penalty of **$59,773.** Respondent shall pay the entire $59,773, either by corporate, cashiers' or certified check, within thirty (30) days from the date of issuance of the attached Final Order (Due Date). Respondent shall: (1) clearly type or write the docket number (CAA-02- 2015-1207) on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer, United States of America;" and (3) send the check to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall send notice of payment to the following:

Robert Buettner, Chief, Air Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2
290 Broadway – 21st Floor
New York, New York 10007

and

Liliana Villatora, Chief, Air Branch
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007

72. If Respondent fails to make full and complete payment of the $59,773 penalty that is required by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

a. Interest. If Respondent fails to make payment, or make partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.

b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars ($15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.

c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

73. Nothing in this CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation(s) of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation(s) of any applicable provision of law, nor shall it be construed as limiting the defenses that Respondent may raise to any such alleged violation(s).

74. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Respondent's alleged violations identified herein.

75. Nothing in this Consent Agreement and attached Final Order shall relieve Respondent of the duty to comply with all applicable provisions of the Clean Air Act and other environmental laws and it is the responsibility of the Respondent to comply with such laws and regulations.

76. This Consent Agreement and attached Final Order shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

77. This Consent Agreement, attached Final Order, and any provision herein is not intended to be an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this CAFO or any of its terms and conditions.

78. Respondent explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement and explicitly waives its right to appeal the attached Final Order.

79. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator

where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

80. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in this action resolved by this Consent Agreement and attached Final Order.

81. The Consent Agreement and attached Final Order shall be binding on Respondent and its successors and assignees.

82. Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

For Respondent:

Scott Ernst, Vice President

NOCO Energy Corp.

Date 07/29/2015

For Complainant:

Dore LaPosta, Director

Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2

Date 8/6/15

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of NOCO Energy Corporation, CAA-02-2015-1207. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.

DATE: Aug 6, 2015

Judith A. Enck

Judith A. Enck
Regional Administrator
United States Environmental
Protection Agency, Region 2