

CONCILIATION ORDER BY CONSENT SECRETARY'S ORDER NO. 2018-A-0019

This Conciliation Order by Consent (hereinafter "Order") is entered this ___ day of March, 2018, by the Delaware Department of Natural Resources & Environmental Control (hereinafter "DNREC"). This Order is entered into by DNREC and by Sunoco Partners Marketing & Terminals LP (hereinafter "SPMT") to require that SPMT address certain alleged noncompliance relating to the flare currently operated by SPMT in Claymont, Delaware. This Order is the result of negotiations between DNREC and SPMT to resolve the violations alleged in DNREC's August 1, 2017 Notice of Violation (hereinafter the "NOV"). The NOV served to notify SPMT that DNREC alleged SPMT to be in violation of 7 *Del. C.* Chapter 60 and 7 DE Admin. Code § 1102, 1117, 1125, 1203 and two conditions of Permit AQM-003/00021, and that violations were alleged to be continuing.

I. BACKGROUND

On April 1, 2013, SPMT acquired certain refining, terminal and other related assets located at the Marcus Hook Industrial Complex in Marcus Hook, Pennsylvania and Claymont, Delaware (the "Marcus Hook Industrial Complex") from Sunoco, Inc. (R&M). Among the assets acquired by SPMT is the former "Ethylene Complex" located in Claymont Delaware adjacent to the Pennsylvania portions of the Marcus Hook Industrial Complex.

The Ethylene Complex and related facilities located in Delaware, along with portions of a docking facility located in Delaware, are the subject of a Title V permit (the "Permit") issued by DNREC to Sun Company, Inc. on December 28, 2001. This Permit identified 23 Emissions Units, among which is Emissions Unit 12, a pipeline and a flare (the "EC Flare"). The permit specifies operational limits, monitoring, testing, reporting and recordkeeping requirements for the EC flare. The Permit was transferred to SPMT on April 1, 2013.

In November of 2015, SPMT applied for a construction permit to install a flare to replace the EC Flare at the Marcus Hook Industrial Complex. The emissions described in the application were reflective of emergency only operations (accounting for sweep and pilot gas). In 2016, SPMT informed DNREC that the information contained in the permit application was not reflective of current operations. On June 14, 2016, SPMT submitted revised emission totals to DNREC via email, which included routine flow from other sources. On June 17, 2016 representatives from DNREC discussed this information with representatives from SPMT. At that time, SPMT confirmed that the EC Flare continues to receive and combust gasses from other sources in the Marcus Hook Industrial Complex as well as sources formerly owned by Sun Company, Inc. (R&M). On September 8, 2016, DNREC returned SPMT's permit application, which it had deemed incomplete because DNREC determined that it lacked information regarding the sources of gasses that would be directed to the flare and emissions information related thereto.

On July 7, 2017, SPMT made application to the Commonwealth of Pennsylvania, for a permit that will allow the construction and operation of a new flare (the "PA Flare") that will

receive and combust gasses from throughout the Marcus Hook Industrial Complex, including all gasses combusted in the EC Flare. The EC Flare will be decommissioned once the PA Flare is fully operational.

II. DNREC'S ALLEGATIONS AND CONCLUSIONS¹

DNREC'S ALLEGATIONS

On August 1, 2017 DNREC issued a Notice of Violation for the alleged construction of connections to the EC Flare and operation of the EC Flare without a permit. The NOV was based on the following conclusions reached by DNREC.

On June 17, 2016, DNREC's Division of Air Quality discovered that the EC Flare located on the Delaware portion of the SPMT Marcus Hook Facility had been connected to additional feeds which resulted in unpermitted emissions from the EC Flare. These operations have violated New Source Review (NSR), based on data provided that indicates that the EC Flare had 50.6 tons of VOC emissions in 2014 and 43.6 tons of VOC emissions in 2015, which is above the major source threshold value of 25 tons per year requiring an NSR evaluation. The emissions at the EC Flare come from unpermitted routine flows, which is an operation that SPMT needs to continue at the facility until a new emissions control device is available. While the EC Flare is permitted under the Permit, there are no provisions in the Permit allowing the discharge of any pollutants from the EC Flare. Further, SPMT should not have initiated the construction and operation of the equipment by connecting new sources to the EC Flare prior to receiving approval from DNREC. Following operation of the EC Flare, SPMT is required to report discharges in excess of reportable quantities. Although a continuous release report was submitted in March 2017, prior reports were not submitted as required. SPMT has also failed to disclose these flare operations in its semi-annual report, dated January 30, 2017 as a deviation.

DNREC'S CONCLUSIONS

DNREC has concluded that SPMT is in violation of the following statutory and regulatory requirements:

1. Seven *Del. C.* § 6003(a)(1) states:
"No person shall, without first having obtained a permit from the Secretary, undertake any activity in a way which may cause or contribute to the discharge of an air contaminant."
2. Seven *Del. C.* § 6003(b)(1) states:
"No person shall, without first having obtained a permit from the Secretary, construct, install, replace, modify or use any equipment or device or other article which may cause or contribute to the discharge of an air contaminant."
3. Seven *Del. C.* § 6028(a) states in part:

¹ SPMT expressly disputes DNREC's allegations and conclusions, see paragraph V.4. below.

“Any person who causes or contributes to an environmental release or to the discharge of an air contaminant into the air; or a pollutant, including petroleum substances, into surface water, groundwater or on land, or disposal of solid waste in excess of any reportable quantity specified under either regulations implementing § 102 of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended [42 U.S.C. § 9602]; § 311 of the Clean Water Act of 1980, as amended [33 U.S.C. § 1321], or Department regulations, whichever restriction is most stringent, shall report such an incident to the Department as soon as the person has knowledge of said environmental release or discharge and activating their emergency site plan if appropriate unless circumstances exist which make such notification impossible.”

4. Section 2.1 of 7 DE. Admin. Code 1102 states:
“Except as exempted in 2.2 of this regulation, no person shall initiate construction, install, alter or initiate operation of any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to receiving approval of his application from the Department or, if eligible, prior to submitting to the Department a completed registration form.”
5. Section 7.2 of DE Admin. Code 1117 states:
“An Emission Statement shall contain data elements addressing source identification information, operating data, actual emissions data, control equipment information and process rate information. Each Emission Statement shall include a certification of the data to ensure that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement. The individual certifying the statement shall be an official of the facility who will take legal responsibility for the Emission Statement’s accuracy.”
6. Section 2.4 of 7 DE Admin. Code 1125, states in part:
“No person subject to the provisions of subsection 2.1 of this regulation shall install a major stationary source of volatile organic compounds or of nitrogen oxides, PM_{2.5}, or sulfur oxides or make a major modification to a source which will cause or contribute to any violation of the national ambient air quality standards for ozone or PM_{2.5} within an area of non-attainment for that pollutant unless the following conditions are met:
 - 2.4.1 The new major source or the major modification is controlled by the application of the lowest achievable emission rate (LAER) control technology.*
 - 2.4.2 All existing sources in the State owned or controlled by the owner of the proposed new or modified source are in compliance with the applicable local, State and federal regulations or are in compliance with a consent order specifying a schedule and timetable for compliance.”*
7. Section 2.1.1. of 7 DE Admin. Code 1203 states:
“Unless otherwise stated in this Section, any person who causes or contributes to an environmental release or to the discharge of an air contaminant into the air or a pollutant, including petroleum substances, into surface water, groundwater or land in excess of any DRQ specified under this Regulation, shall report such discharge to the Department as soon as the person has knowledge of said environmental release or

discharge while activating the appropriate emergency site plan unless circumstances exist which make such a notification impossible. A delay in notification shall not be considered a violation of this Regulation when the act of reporting may delay the mitigation of the discharge and/or the protection of public health and the environment.”

8. Condition 3 – Table 1(l)(1)(i)(L) of Permit: AQM-003/00021 states:
“The Company shall not build, erect, install, or use any article, machine, equipment or process, the use of which conceals an emission which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous diluents to achieve compliance with an opacity standard or with a standard which is based on the concentration of a pollutant in the gases discharged to the atmosphere.”

9. Condition 3(c)(2)(i) of Permit: AQM-003/00021 States:
“The Company shall submit to the Department a report of any required monitoring not later than the first day of August (covering the period from January 1 through June 30) and the first day of February (covering the period July 1 through December 31 of each calendar year. Each report shall identify any deviation(s) from permit requirements since the previous report, any deviation(s) from the monitoring, record keeping, and reporting requirements under this permit, and the probable cause of the deviation(s) and any corrective actions or preventative measures taken. If no deviation(s) has occurred such shall be stated in the report.”

III. TERMS & CONDITIONS FOR CONTINUED USE OF THE EC FLARE

1. SPMT shall not route any waste stream from a source that is not listed on Exhibit A without DNREC’s prior approval, and annual emissions from the EC Flare shall not exceed the amounts and types set forth in the potential emissions table on Exhibit A.
2. SPMT shall comply with the operational limitations and standards set forth in Exhibit B hereto.
3. Except as otherwise set forth herein, SPMT shall comply with all the terms and conditions of the Permit.
4. Except as set forth in paragraph 5 below, SPMT shall discontinue all operations of the EC Flare and shall decommission the EC Flare as soon as practicable following the date on which the PA Flare becomes fully operational but not later than April 1, 2019. SPMT shall immediately thereafter surrender all permits to DNREC for operation of the Flare.
5. In the event that SPMT is unable to permanently discontinue all operation of the EC Flare prior to April 1, 2019, SPMT may continue to use the EC Flare as set out hereinabove, but shall be subject to a stipulated penalty of \$1,000 per day from April 1, 2019, through June 30, 2019. Operation of the EC Flare in any capacity on July 1, 2019, or later is not governed

by the terms of this order and DNREC is free to take any and all enforcement actions available to it for continued operation of the flare for any reason thereafter.

IV ADMINISTRATIVE PENALTY AND COSTS

Pursuant to the provisions of 7 *Del. C.* § 6005(b)(3), DNREC assesses, and SPMT agrees to pay, an administrative penalty of \$600,000 to resolve the violations alleged by DNREC in Section II hereof.

In addition to the penalty assessment, DNREC also assesses SPMT, and SPMT agrees to pay, \$150,000 to support the transition of Delaware's ambient monitoring network from filter based PM2.5 monitoring to continuous monitors as an environmental improvement project "EIP." The EIP shall be completed as soon as reasonably practicable after issuance of this Order.

The administrative penalty assessed herein shall be due and payable to DNREC within 30 days of execution of this Agreement and receipt by SPMT of appropriate tax identification and accompanying documentation. The check shall be made payable to the "State of Delaware" and shall be directed to: Valerie S. Edge, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

V. GENERAL PROVISIONS

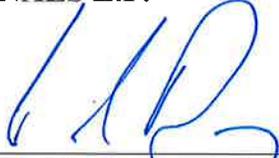
1. **Term**: This Order shall terminate upon SPMT's satisfactory performance of its obligations under the Order.
2. **Breach**: In the event of a breach by SPMT of the terms and conditions of this Order, DNREC may take such enforcement action or actions as are available to it under applicable law, including but not limited to one or more of the following: an action under 7 *Del. C.* § 6005(b)(1) for civil penalties; an action under 7 *Del. C.* § 6005(b)(2) seeking a temporary restraining order or an injunction; an action under 7 *Del. C.* § 6005(b)(3) for administrative penalties; as well as recovery of DNREC's costs and attorney's fees.
3. **Release**: In exchange for SPMT's compliance with this Agreement, DNREC agrees that this Agreement shall fully resolve, and shall constitute an accord and satisfaction of, any and all violations of state or federal law that have been or could have been alleged by DNREC with respect to the ownership or use of the EC Flare on or prior to the date hereof related to the allegations of violations contained herein. This release shall include all current and prior owners and operators of the Marcus Hook Industrial Complex including but not limited to SPMT; Sunoco, Inc. (R&M) n/k/a Sunoco (R&M), LLC; Sun Services Corporation; Sunoco, Inc.; and Sunoco Pipeline L.P..
4. **No Admission of Noncompliance**: SPMT accepts this Agreement in order to resolve the alleged violations set forth above, without admission of fact, violation, or liability,

and in lieu of further enforcement by DNREC for the matters addressed in this Agreement. SPMT specifically denies any and all allegations of liability and wrongdoing. DNREC agrees that execution of this Agreement by SPMT does not constitute an admission of any fact or violation of law, regulation or permit condition. DNREC and SPMT agree that the actions to be performed hereunder by SPMT, as well as execution of this Agreement, shall not be construed to be an admission of liability or wrongdoing on the part of SPMT. DNREC and SPMT further agree that the continued use of the EC Flare pursuant to this order and the release contained herein shall have no impact whatsoever on DNREC's ability to take enforcement action with respect to the use of the EC Flare after June 30, 2019.

5. Expenses, Costs, Attorneys Fees and Interest: With the exception of the Administrative Penalty and the EIP as provided for in Section IV, "ADMINISTRATIVE PENALTY AND COSTS," the Parties shall bear their own costs, expenses, and attorney's fees incurred in connection with this Agreement. SPMT shall pay interest for any late payment due under this Agreement at the statutory rate pursuant to 6 Del. C. § 2301.

6. Binding on Successors: It is the intention of the Parties that this Agreement shall be binding upon and enforced against the Parties and their successors, heirs, executors, administrators and assigns.

CONSENTED TO BY: **SUNOCO
PARTNERS MARKETING &
TERMINALS L.P.**

By: 
Name: Matt Ramsey
Title: President & COO
Date: 3.6.18

**DELAWARE DEPARTMENT OF
NATURAL RESOURCES &
ENVIRONMENTAL CONTROL**


Shawn M. Garvin, Secretary

Date: 3/9/18

Exhibit A

		Flare Flows by Type and Composition										
SPMT Area of Origin	Flow Type	Flow Quantity (lb/year) and Composition								Nitrogen	Natural Gas	
		Butane	Propane	Propylene	Gasoline	Pentane	Propane	Propylene	Gasoline			
1 Cavern	Maintenance	942	---	---	---	---	---	---	---	---	31	---
	Emergency	---	---	---	---	---	---	---	---	---	---	---
2 Cavern	Operational	967	---	---	---	---	---	---	---	---	---	---
	Maintenance	9,013	---	---	---	---	---	---	---	---	161	---
3 Cavern	Sweep	---	---	---	---	---	---	---	---	---	---	43,772
	Emergency	---	---	---	---	---	---	---	---	---	---	---
3A Dock	Maintenance	3,301	---	---	---	---	---	---	---	---	49	---
	Operational	1,994	---	---	---	---	---	---	---	---	---	---
5 Cavern	Emergency	---	---	---	---	---	---	---	---	---	---	---
	Maintenance	---	8,016	---	---	---	---	---	---	---	343	---
C3/ C4/ Natural Gasoline Railcar Rack	Operational	---	6,166	---	---	---	---	---	---	---	69,850	---
	Emergency	---	---	---	---	---	---	---	---	---	---	---
C5 Splitter	Maintenance	---	1,460	---	---	---	---	---	---	---	---	---
	Operational	348	2,355	---	---	---	---	---	---	---	---	---
ME2 Pipeline	Emergency	---	---	---	---	---	---	---	---	---	---	---
	Maintenance	---	---	---	14,008	---	---	---	---	---	25,931	---
Methanol Recovery Unit	Operational	---	---	---	24	---	---	---	---	---	---	243,841
	Emergency	---	---	---	---	---	---	---	---	---	---	---
Revolution Project	Maintenance	6,710	12,459	---	---	---	---	---	---	---	129	---
	Operational	---	135,321	---	---	---	---	---	---	---	---	---
Revolution Project	Maintenance	138	---	---	---	---	---	---	---	---	764	---
	Operational	61,320	---	---	---	---	---	---	---	---	---	---
Revolution Project	Emergency	---	---	---	---	---	---	---	---	---	---	---
	Maintenance	5,296	25,000	---	---	---	---	---	---	---	40,867	---
Revolution Project	Operational	5,536	34,041	---	4,774	---	---	---	---	---	0	---
	Sweep	---	---	---	---	---	---	---	---	---	---	203,000

Flare Flows by Type and Composition

SPMT Area of Origin	Flow Type	Flow Quantity (lb/year) and Composition							
		Butane	Propane	Propylene	Gasoline	Pentane	Nitrogen	Natural Gas	
SXL Depropanizer	Maintenance	---	216	---	---	---	74	---	
	Operational	---	413	---	---	---	---	---	
	Sweep	---	---	---	---	---	---	126,000	
IRPL 4N	Emergency	---	---	---	---	---	---	---	
	Maintenance	371	37	---	---	---	---	---	
IRPL 5N	Emergency	---	---	---	---	---	---	---	
	Maintenance	---	707	---	---	---	---	---	
ME1 DE/PA Meter Station	Emergency	---	---	---	---	---	---	---	
	Maintenance	---	---	---	---	---	---	---	
	Operational	---	---	---	---	---	152	3	
	Sweep	---	---	---	---	---	---	295,000	
V-282	Emergency	---	---	---	---	---	---	---	
	Maintenance	---	---	---	---	---	---	7	
	Operational	---	---	---	---	---	---	10,382	
	Emergency	---	---	---	---	---	---	---	
H-5	Maintenance	---	---	306,000	---	---	---	---	
	Operational	---	---	431,585	---	---	6,580	---	
	Sweep	---	---	---	---	---	52,560	---	
	Emergency	---	---	---	---	---	---	---	
Splitters	Maintenance	---	---	2,160,000	---	---	---	---	
	Operational	---	295,600	1,166,160	---	---	2,580,000	---	
	Sweep	---	---	---	---	---	36,500	---	
	Maintenance	1	---	---	---	---	20	---	
General	Sweep	---	---	---	---	---	---	---	
	Maintenance	---	---	---	---	---	387,000	2,680,000	
Total (lb/year)		95,937	521,789	4,063,745	18,955	1,083,173	3,201,010	3,602,004	

- Notes:**
- Flows were conservatively estimated based on an engineering analysis of individual connections in regards to the frequency, duration, and composition.
 - There are operational/maintenance flows that are listed in the West Warm Flare overview that are conservatively assumed to occur routinely. However, in practice, these flows may not occur routinely because they can be influenced by feedstock characteristics, non-routine process conditions, and weather conditions.
 - Due to the varying frequency, duration, and timing of the operational/maintenance activities, the flows associated with these activities have been annualized for the purposes of determining the potential to emit.

Sunoco Partners Marketing & Terminals L.P.
 Flare Project
 Emissions Summary
 January 2018

Potential Emissions

West Warm Flare	Heating Duty (MMBtu/hr)	Emissions (TPY)				
		NO _x	CO	VOC	SO ₂	CO ₂ e
Pilot & Purge Continuous Flows	0.87	0.26	1.18	0.03	0.002	502
Sweep Continuous Flows	8.60	2.56	11.68	0.33	0.02	5,289
Operational & Maintenance Flows	14.57	4.34	19.78	57.86	0.0017	8,825
Total	24.04	7.16	32.64	58.23	0.03	14,616

Potential Emissions

West Warm Flare	Heating Duty (MMBtu/hr)	Emissions (lb/hr)				
		NO _x	CO	VOC	SO ₂	CO ₂ e
Pilot & Purge Continuous Flows	0.87	0.06	0.27	0.01	5.1E-04	115
Sweep Continuous Flows	8.60	0.58	2.67	0.08	0.005	1,208
Operational & Maintenance Flows	14.57	0.99	4.52	13.21	3.8E-04	2,015
Total	24.04	1.63	7.45	13.29	0.006	3,337

Exhibit B – Proposed Operational Limitations

I. Emissions/Operational Limitations

- A. The flare shall be designed for and operated with no visible emissions, except for periods not to exceed a total of five (5) minutes during any two (2) consecutive hours. [§40 CFR 60.18(c)(1)]
- B. The flare shall be operated with a pilot flame present at all times. [§40 CFR 60.18(c)(2)]
- C. The flare shall be used only with the net heating value of the gas being combusted is 300 Btu/scf or greater. [§40 CFR 60.18(c)(3)]
- D. Exit Velocity [§40 CFR 60.18(c)(4)]:
 - 1. This steam-assisted flare shall be designed for and operated with an exit velocity less than 18.3 m/sec (60 ft/sec), except as provided in paragraphs (2) or (3) of this section.
 - 2. A flare exit velocity equal to or greater than 18.3 m/sec (60 ft/sec) but less than 122 m/sec (400 ft/sec) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).
 - 3. The flare exit velocity shall be less than the velocity, V_{max} , as determined by the methods specified in §40 CFR 60.18.
- E. The permittee shall ensure that the flare is operated and maintained in conformance with its design. [§40 CFR 60.18(d)]
- F. The flare shall be operated at all times when emissions may be vented to them. [§40 CFR 60.18(e)]
- G. At all times, including periods of startup, shutdown, and malfunction, the Company shall, to the extent practicable, maintain and operate the flare and attached units in a manner consistent with good air pollution control practice for minimizing emissions. [§40 CFR 60.11(d)]

II. Testing/Monitoring Requirements

- A. Visible emissions from the flare shall be monitored as follows to determine the compliance of this flare with the visible emission provisions:
 - 1. The Company shall monitor flame opacity at all times using a video camera. The monitor for the camera shall be in plain sight in the control room at all times. [DE Regulation No. 1130, Section 6.1.3.1.1]
 - 2. Each day, the Company shall conduct a qualitative observation (similar to Method 22) of the flare to evaluate the presence or absence of smoke and/or visible air contaminants during a continuous fifteen (15) minute period while the flare is in operation. [DE Regulation No. 1130, Section 6.1.3.1.1]
 - 3. If visible emissions are detected during the daily qualitative survey of visible emissions or is observed at any other time, the Company shall conduct an additional qualitative observation of the flare to verify compliance. [§40 CFR 60.18(f)(1)]

- B. The permittee shall continuously monitor the presence of a pilot flame for this flare by using a thermocouple or any other equivalent device to detect the presence of a flame. [§40 CFR 60.18(f)(2)]
- C. The flare gas shall be sampled three times each week and analyzed for net heating value to comply with §40 CFR 60.18(c)(3) and §40 CFR 60.18(f)(3). [DE Regulation No. 1130, Section 6.1.3.1.1]
- D. The flow rate of gas being sent to the flare shall be monitored continuously. [DE Regulation No. 1130, Section 6.1.3.1.1]

III. Recordkeeping Requirements

- A. The Company shall record the following information and keep it for a period of at least 5 years: [DE Regulation No. 1130, Section 6.1.3]
 - 1. The permittee shall maintain hourly records for the presence of a pilot flame on this flare.
 - 2. Daily visible emission log.
 - 3. Flare velocity and Btu content data.

IV. Reporting Requirements

- A. The Department shall be notified whenever the visible emission standard has been violated and again once the flaring incident has concluded. These notifications shall include the following information: [DE Regulation No. 1130, Section 6.1.3]
 - 1. Initial flaring notification:
 - a. Date and time flaring episode started.
 - b. Start of visible emission violation.
 - c. Initial flow rate of gas to the flare.
 - d. Preliminary reason for flaring.
 - 2. Final flaring notification:
 - a. All information contained in the initial flaring report.
 - b. Date and time of flaring episode ended.
 - c. Means taken to eliminate flare opacity, including steam flowrate changes, processes shut or turned down, and flare gas diverted to other flares.
 - d. Total period during which the visible emission standard was violated.