

IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

FILED
LUCAS COUNTY
JUL 5 3 07 PM '89

STATE OF OHIO, ex rel.
ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

Plaintiff,

vs.

SUN REFINING AND
MARKETING COMPANY,

Defendant.

CASE NO. 88-2447

JUDGE DONEGHY

COMMON PLEAS COURT
CAROL A. PIETRYKOWSKI
CLERK OF COURTS

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Anthony J. Celebrezze, Jr. (hereinafter "Plaintiff") and Defendant Sun Refining and Marketing Company (hereinafter "Defendant" or "Sun Refining") having consented to the entry of this Order.

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6111. of the Ohio Revised Code, and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them.

Defendant Sun Refining shall provide a copy of this Consent Order to each agent, officer, and employee who has oversight and/or supervisory authority or responsibility related to any activities of Sun Refining in carrying out the terms of this Consent Order and to each contractor it employs to perform work itemized herein. The Plaintiff provides notice to Sun Refining that it fully intends to exercise any rights under law it may have to obtain a contempt of court citation against any Sun Refining agent, officer, employee, assign, successor in interest, or other person acting in concert or privity with any of them who interferes with or obstructs Sun Refining's efforts to comply with this Consent Order if Sun Refining does not comply with this Consent Order.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant has operated its Facility in such a manner as to result in numerous violations of the discharge limitations and other requirements of the NPDES Permit issued to it by the Director of Ohio EPA and in violation of the water pollution laws of the State of Ohio. Defendant has denied Plaintiff's allegations and nothing in this Consent Order is to be construed as an admission that

any of Plaintiff's allegations are true. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil or administrative liability by Defendant for all claims alleged in the Complaint or all claims which could have been brought for NPDES permit violations at the Defendant's Facility regarding effluent limitations, bypasses, and monitoring and reporting violations which arose on or before May 1, 1989 of which Plaintiff has knowledge. The penalty provision set forth in paragraph 6 of this Consent Order is intended to cover effluent limitations, bypass, monitoring and reporting violations that occurred in the past, and the penalty provisions of paragraphs 8, 9, 10 are intended to cover effluent limitations and bypass violations of Defendant's Permit which occur in the future during operations at the Facility. The State of Ohio reserves the right to assess additional penalties and/or to bring any action at law or equity for violations of Defendant's Permits or applicable law which were not alleged in the Complaint other than for claims which could have been brought for NPDES permit violations-at the Defendant's Facility regarding effluent limitations, bypasses, and monitoring and reporting violations which arose on or before May 1, 1989 of which Plaintiff has knowledge, and reserves the right to assess additional penalties and/or bring any action at law or equity for violations of Defendant's Permit or applicable law which occur after May 1, 1989. The State of Ohio agrees not to seek both stipulated penalties, as

provided for in this Order, and civil penalties, as authorized under ORC Chapter 6111. for the same violation of this Consent Order.

IV. INJUNCTION

4. Defendant Sun Refining is hereby permanently enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the terms and conditions of the rules and regulations adopted under that Chapter and its currently effective NPDES Permit, and any renewals or modifications thereof, including the interim and final effluent limitations set forth in the schedules of said permit(s). Sun Refining is hereby permanently enjoined to operate and maintain its wastewater treatment plant and any associated equipment and structures in accordance with Part III 3 (Facility Operation and Quality Control) of its currently effective NPDES permit, and any renewals or modifications thereof. Subject to Section V and VII, infra, Sun Refining is also permanently enjoined and ordered to eliminate all discharges from overflows and bypasses from its facility in violation of said Permit. Further, Sun Refining is enjoined and ordered to take compliance sampling on random days of the week instead of always taking compliance sampling on the same day of the week. Attachment 1 sets forth a "Sampling Protocol" and is incorporated herein by reference and made a part of this Consent Order. Defendant is enjoined and ordered to comply with the requirements of Attachment 1. The Plaintiff and

Defendant may, upon mutual written agreement, modify the sampling protocol without a court order but the parties agree to provide the Court with any modified "Sampling Protocol" and upon filing of such document with the Court it shall be of the same force and effect as the original Attachment 1.

V. CONSTRUCTION SCHEDULE

5. Defendant Sun Refining is hereby enjoined and ordered to complete construction of a project to raise the height of the bypass outfall pipe in the retention basin by nine (9) inches as described in the Permit to Install "PTI" which was issued by the Ohio EPA to Sun Refining on May 23, 1989 (a copy of which is attached as Attachment 2 and is incorporated by reference herein), and as set forth herein in subparagraphs 5(a), 5(b), 5(c) and 5(d).

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submit an approvable PTI application, fee and detailed engineering plans to Ohio EPA.	Completed
(b) Awarding of construction contracts.	July 1, 1989
(c) Initiation of Construction.	August 1, 1989
(d) Completion of Construction in accordance with the PTI and detailed engineering plans.	November 1, 1989

VI. CIVIL PENALTY

6. Defendant Sun Refining shall pay to the State of Ohio a civil penalty of \$350,000.00. The penalty shall be paid by delivering to counsel for Plaintiff at the address indicated herein, a check for that amount, payable to the order of

"Treasurer, State of Ohio" within thirty (30) days from the date of entry of this Consent Order.

VII. STIPULATED PENALTIES

7. Defendant Sun Refining shall pay stipulated penalties in accordance with the schedule provided for in this paragraph if it fails to meet any of the requirements of this Consent Order set forth in Paragraphs 5(a), 5(b), 5(c), and 5(d), including any schedule milestone requirement or if it fails to meet any of the requirements of the Sampling Protocol set forth in Attachment 1. Defendant Sun Refining shall also pay stipulated penalties in accordance with the schedule provided for in this paragraph if it violates any of the requirements of Paragraph 4 of this Consent Order if such violation is of one of the following requirements of Sun Refining's currently effective NPDES permit for the Facility or the violation is of one of the following requirements of a renewal or modification permit which requirement is identical to one of the following requirements of Sun Refining's currently effective NPDES permit for this Facility: analytical methods, reporting requirements, recording of results, records retention, noncompliance notification, reports of unauthorized discharges and right of entry. Defendant Sun Refining shall also pay stipulated penalties in accordance with the schedule provided for in this paragraph if it violates any of the requirements of Paragraph 4 of this Consent Order if such violation is of one of the following requirements of Sun Refining's final, non-appealable renewal or modification NPDES permit for this Facility which violation is of

one of the following requirements but said requirement is not identical to a requirement in Sun Refining's currently effective NPDES permit for this Facility: analytical methods, reporting requirements, recording of results, records retention, noncompliance notification, reports of unauthorized discharges and right of entry. The Defendant shall be liable immediately and automatically for stipulated penalties under this paragraph. For each day of failure to meet a requirement, up to thirty days - \$500.00 per day. For each day of each failure to meet a requirement, from thirty-one to sixty days - \$1,000.00 per day. For each day of each failure to meet a requirement, from sixty-one to ninety days - \$2,500.00. For each day of each failure to meet a requirement, from ninety-one days and thereafter - \$3,500.00 per day. The stipulated penalties provided for under this paragraph shall become due and payable to the State without notification from the State.

8. The following payments shall be made by Sun Refining for effluent limitation violations: For each day for which Sun Refining reports a violation up to thirty (30) days - \$500.00 per day for each day of each parameter violation. For each day for which Sun Refining reports a violation, from thirty-one (31) to sixty (60) days - \$1,000.00 per day for each day of each parameter violation. For each day for which Sun Refining reports a violation from sixty-one (61) to ninety (90) days - \$2,500.00 per day for each day of each parameter violation. For each day for which Sun Refining reports a violation over

ninety-one (91) days - \$3,500.00 per day for each day of each parameter violation. The stipulated penalties provided for in this paragraph shall become due upon the State's written notification to Sun Refining of the violation and the amount of stipulated penalty owed for that violation.

9. In the event that Sun Refining fails to meet any of the thirty (30) day average effluent limitations, it shall be liable for payment of a stipulated penalty of two thousand dollars (\$2,000.00) for each thirty (30) day period during which the failure occurs; if the failure to meet any of its thirty (30) day average effluent limitations continues for a second consecutive thirty (30) day period, Sun Refining shall be liable for the payment of a stipulated penalty of three thousand dollars (\$3,000.00); if the failure to meet any of its thirty (30) day average effluent limitations continues for a third consecutive thirty (30) day period, Sun Refining shall be liable for the payment of a stipulated penalty of four thousand dollars (\$4,000.00); if the failure to meet any of its thirty (30) day average effluent limitations continues for a fourth consecutive thirty (30) day period, Sun Refining shall be liable for the payment of a stipulated penalty of ten thousand dollars (\$10,000.00). Should Sun Refining have to monitor its effluent for a seven (7) day average period in any renewal or modification NPDES permit, it shall pay a stipulated penalty for any seven (7) day average effluent violation in accordance with the schedule provided for in this paragraph but the

stipulated penalty due shall be one-fourth of the amount due for a thirty (30) day average violation. If said renewal or modification permit also has any thirty (30) day average requirements, Sun Refining shall also be subject to the stipulated penalty provisions in this paragraph for each thirty (30) day average violation. The stipulated penalties provided for under this paragraph shall become due upon the State's written notification to Sun Refining of the violation and the amount of stipulated penalty owed for that violation.

10. The following payments shall be made by Defendant Sun Refining for overflows and bypasses in violation of its NPDES Permit: after completion of construction pursuant to paragraph 5, \$7,500.00 for each day that the Sun Refining's Facility experiences an overflow or bypass except that there shall be no stipulated penalty under this paragraph if there is three (3) inches of rain on the Facility in any one 24-hour period within forty-eight (48) hours before the overflow or bypass. The penalty provided by this paragraph shall become due and payable to the State without notice or demand from the State. Sun Refining shall provide the Ohio EPA, at the address provided for in Section V, a report, in addition to any report required by its currently effective NPDES permit, and any renewals or modifications thereof, of any violations of effluent limitations and overflows and bypasses in violation of its permit. This report shall also include a statement of whether Sun Refining has not paid a stipulated civil penalty of

\$7,500.00 for each day that the Facility experienced an overflow or bypass because there was three inches of rain on the Facility in any one 24 hour period within 48 hours before the overflow or bypass. For purpose of determining the amount of rain on the Facility, Sun Refining shall install, maintain and operate to the satisfaction of the Director a rain gauge on the Facility. If such a claim is made, Sun Refining shall submit documentation from the rain gauge documenting such rainfall in such time period.

11. Any payment required to be made under the provisions of Section VII of this Order shall be made by delivering to Plaintiff's counsel a check or checks for the appropriate amounts, within thirty (30) days from either the date of the failure to meet the requirement of the Consent Order, or notice from the State of the effluent limitation violation (whichever is applicable pursuant to this Section), made payable to "Treasurer, State of Ohio".

12. Subject to the conditions set forth in Paragraph 3, the stipulated penalties set forth above shall be in addition to, and shall not preclude use of, any other remedies or sanctions available to the State of Ohio by reason of Sun Refining's failure to comply with any requirements of this Consent Order or any applicable law.

VIII. RETENTION OF JURISDICTION

13. The Court will retain jurisdiction of this action for the purpose of making any order or decree to carry out this

Consent Order. Nothing in this Consent Order shall preclude the Plaintiff from moving the Court to order additional injunctive relief if the measures taken by Sun Refining under this Consent Order do not prove successful in eliminating violations at the Facility of Chapter 6111. of the Ohio Revised Code or Sun Refining's NPDES permit regulating the wastewater discharges from the Facility to waters of the State at the time of the violation.

IX. COSTS

14. Defendant Sun Refining is hereby ordered to pay the Court costs of this action.

X. POTENTIAL OF FORCE MAJEURE DEFENSE

15. In any action to enforce any of the provisions of this Consent Order, the Defendant may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, act of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or conflicting orders of any regulatory agency. 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 enforcement action, if any, is commenced. Acceptance of this Consent Order without a force majeure clause does not

constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

XI. TERMINATION

16. The stipulated penalty provisions of Section VII shall terminate on a date not earlier than twelve (12) months from the date all the construction is completed as required by paragraph 5 and during the twelve (12) month period the Facility must demonstrate to the satisfaction of the State that it has been in total compliance with all terms of this Consent Order. Should the Facility not demonstrate that it has been in compliance with the Consent Order for this twelve month period, it must demonstrate to the State that it is in total compliance with all terms of this Consent Order and all penalties and stipulated penalties are paid in full for some other consecutive twelve (12) month period after all construction is complete as required by this Consent Order.

17. No earlier than three years from the date of the Court's approval of this Consent Order, the Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate the permanent injunction provisions of paragraph 4 of this Consent Order if the Defendant can demonstrate that it has been in compliance with the obligations of this Consent Order for such a three year period. The Plaintiff takes no position as to such motion and reserves any rights it may have to oppose the motion including the basis that three years is, in actuality, not an appropriate time

period.

for Will J. Doneghy
JUDGE DONEGHY 7-5-89

SUN REFINING AND MARKETING COMPANY

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

By: H.S. Roe

Paul D. Hancock

Name: H. S. Roe

PAUL D. HANCOCK
EDWARD S. DIMITRY
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410
(614) 466-2766

Title: Vice President, Operations
APPROVED AS TO FORM:

Worys, Sater, Seymour & Pease
John W. Hoberg

JOHN W. HOBERG, Esq.
MICHAEL W. DONALDSON, Esq.
Attorneys for Sun Refining and Marketing Company
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-6400

James R. Jeffrey
JAMES R. JEFFREY, Esq.
Spengler, Nathanson, Heyman, McCarthy & Durfee
1000 National Bank Building
Toledo, Ohio 43604-1169

Counsel for Defendant

/clp
5648.1-13

ATTACHMENT 1

SUN

Sun Refining and
Marketing Company
P.O. Box 920
Toledo OH 43693-0920
419 698 6600

May 26, 1989

Mr. Paul Brock, P.E.
Ohio EPA
1035 Deviac Grove Drive
Bowling Green, Ohio 42402-4598

Dear Paul:

As recommended by Paul Hancock, Assistant Attorney General, Sun Refining and Marketing Co. is proposing the following compliance sampling schedule for your review.

It is proposed to rotate the schedule for twice weekly compliance sampling on a monthly basis. Hourly employees who set up the sampling apparatus and who inspect the equipment for proper functioning work on rotating shifts, increasing the possibility of missed samples if the schedule is altered more frequently.

The schedule shown in the attached table will be followed. After the end of the sixth month the rotation will start again at month one. No samples are scheduled to be taken on Fridays due to the long retention time over the weekend which would exceed allowable limits for hexavalent chromium and BOD5. All composite samples will be collected from midnight to midnight in order to correspond with daily flow rates and allow proper calculation of daily loadings.

Sampling days for which scheduled pick up would fall on a major holiday may be moved either up or back one day to limit retention time. Should a malfunction of the sampling equipment occur, the scheduled sample will be taken the next day and the schedule resumed without other changes.


Susan G. Bell
Environmental Engineer

cc: L.T. Clere, L.A. Comas, E. J. Ciechon,
J.W. Hoberg, Vorys, Sater, Seymour & Pease

SUN REFINING & MARKETING COMPANY
PROPOSED COMPLIANCE SAMPLING SCHEDULE

Month	Sample Day	Pickup Day
1)	Sunday Thursday	Monday Friday
2)	Monday Wednesday	Tuesday Thursday
3)	Saturday ** Tuesday	Monday Wednesday
4)	Thursday Tuesday	Friday Wednesday
5)	Sunday Wednesday	Monday Thursday
6)	Monday Saturday **	Tuesday Monday

Samples for which pickup would fall on a major holiday will be taken either a day earlier or a day later.

** Hexavalent chromium grab samples will not be taken on Saturdays because maximum allowable retention time is 24 hours. Samples for hex chrome will be taken on Sunday for Monday morning pickup.



State of Ohio Environmental Protection Agency

P.O. Box 1049, 1800 WaterMark Dr.
Columbus, Ohio 43266-0149

Richard F. Celeste
Governor

May 23, 1989

Re: Oregon - Lucas County
Application No. 03-4430
Application for Modification to Impoundment
Basin for Toledo Refinery
Received April 24, 1989
From Avca Corporation (G.J. Simon, P.E.) Through
M.G. Ruffner, Refinery Manager

Sun Refining and Marketing Company
P.O. Box 920
Toledo, Ohio 43963

Gentlemen:

CERTIFIED MAIL

Enclosed is the Ohio EPA Permit to Install which will allow you to install the described source in the manner indicated in the permit. Because this permit contains several conditions and restrictions, I urge you to read it carefully.

As indicated on the permit, you are required to pay a permit fee as provided for by Section 3745.11 of the Ohio Revised Code and any rules established thereunder. The exact amount of this fee is indicated on page 1 of the Permit to Install. This amount must be remitted within fifteen (15) days of the effective date of the Permit to Install. Checks should be made payable to: Treasurer, State of Ohio and sent to Permits Bookkeeper, Ohio Environmental Protection Agency, P. O. Box 1049, 1800 WaterMark Dr., Columbus, Ohio 43266-0149.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Board of Review pursuant to Section 3745.04 of the Ohio Revised Code by any person who was a party to this proceeding. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It must be filed with the Environmental Board of Review within thirty (30) days after notice of the Director's action. A copy of the appeal must be served on the Director of the Ohio Environmental Protection Agency and the Environmental Law Division of the Office of the Attorney General within three (3) days of filing with the Board. An appeal may be filed with the Environmental Board of Review at the following address:

Environmental Board of Review
236 East Town Street, Room 300
Columbus, Ohio 43266-0557

Sun Refining and Marketing Company
May 23, 1989
Page 2

You should note that a general condition of the permit does not relieve you of applicable federal, state and local law.

your permit states that issuance of the permit is contingent upon your compliance with all applicable laws, regulations and standards.

If you have any questions, please contact the person to whom you submitted your application.

to EPA District Office to

Sincerely,



John J. Sadzewicz, P.E., Manager
Permit Section
Division of Water Pollution Control

JJS/fy

cc: Lucas County Health Department
Avca Corporation
Toledo Environmental Services Agency
Northwest District Office, Industrial Waste

OHIO ENVIRONMENTAL PROTECTION AGENCY

Permit to Install

Application No. 03-4430

Applicant's Name: Sun Refining and Marketing
Company

Permit Fee \$750.00

Address: P.O. Box 920

City: Toledo

State: Ohio 43963

Person to Contact: Ms. Susan G. Bell
Telephone: (419) 689-6987

Description of Proposed Source: Modifications to Impoundment Basin for Toledo
Refinery, Oregon, Lucas County

Issuance Date: May 23, 1988

Effective Date: May 23, 1989

The above named entity is hereby granted a permit to install for the above described source pursuant to Chapter 3745-31 of the Ohio Administrative Code. Issuance of this permit does not constitute expressed or implied approval or agreement that, if constructed or modified in accordance with the plans included in the application, the above described source of environmental pollutants will operate in compliance with applicable State and Federal laws and regulations, and does not constitute expressed or implied assurance that if constructed or modified in accordance with those plans and specifications, the above described source of pollutants will be granted the necessary operating permits. This permit is granted subject to the following conditions attached hereto:

Ohio Environmental Protection Agency



Richard L. Shank, Ph.D.
Director
P. O. Box 1049, 1800 WaterMark Dr.
Columbus, Ohio 43266-0149

Sun Refining and Marketing Company
May 23, 1989
Page 2

This permit shall expire if construction has not been initiated by applicant within eighteen months of the effective date of this permit. By accepting this permit, applicant acknowledges that this eighteen month period shall not be considered or construed as extending or having any effect whatsoever on any compliance schedule or deadline set forth in any administrative or court order issued to or binding upon the permit applicant, and applicant shall abide by such compliance schedules or deadlines to avoid the initiation of additional legal action by the Ohio EPA.

The Director of the Ohio Environmental Protection Agency, or his authorized representatives, may enter upon the premises of the above named applicant during construction and operation at any reasonable time for the purpose of making inspections, conducting tests, examining records or reports pertaining to the construction, modification or installation of the above described source of environmental pollutants.

Issuance of this permit does not relieve you of the duty of complying with all applicable federal, state, and local laws, ordinances, and regulations.

This permit is conditioned upon payment of applicable fees as required by Section 3745.11 of the Ohio Revised Code, and shall be invalid unless the permit fee specified above has been paid in full to the Ohio EPA within fifteen days of issuance of this permit to install.

The proposed wastewater disposal system shall be constructed in strict accordance with the plans and application approved by the Director of the Ohio Environmental Protection Agency. There shall be no deviation from these plans without the prior express, written approval of the agency. Any deviations from these plans or the above conditions may lead to such sanctions and penalties as provided under Ohio law. Approval of this plan and issuance of this permit does not constitute an assurance by Ohio Environmental Protection Agency that the proposed facilities will operate in compliance with all Ohio laws and regulations. Additional facilities shall be installed upon orders of the Ohio Environmental Protection Agency if the proposed sources are inadequate or cannot meet applicable standards.

Sewer and manhole construction joints shall conform to standards of the Ohio Environmental Protection Agency.

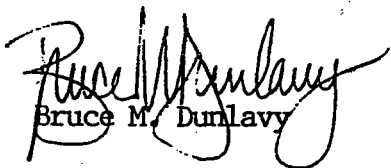
REPORT ON PERMIT TO INSTALL APPLICATION FOR MODIFICATIONS TO
IMPOUNDMENT BASIN AT SUN REFINING & MARKETING CO.
TOLEDO REFINERY, LUCAS COUNTY, APPLICATION NO. 03-4430

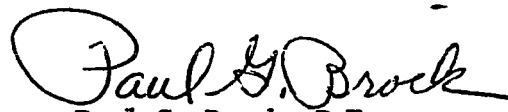
On April 24, 1989, the Northwest District Office received an application for a Permit to Install from Sun Refining & Marketing Company. The application was submitted by Michael G. Ruffner, Refinery Manager, with accompanying plans prepared by Gregg J. Simon, P.E., for Avca Corporation, 5855 Monroe Street, Toledo, Ohio 43560.

The application concerned modifications to the existing impoundment basin at the Toledo Refinery, 1819 Woodville Road, Oregon, Ohio 43616. The current capacity of the basin is to be increased by 1.2 million gallons by a nine-inch increase in the height of the existing overflow standpipe and commensurate increases in the height of existing embankments by addition of recompacted clay. In addition, two existing staircases will be removed; one will be replaced by a higher staircase. Six catch basins are to be modified to provide more stable foundations and appropriate elevations.

Estimated cost of the proposed project is \$131,000.

This application appears satisfactory and is recommended for approval.


Bruce M. Dunlavy


Paul G. Brock, P.E.
Permits Group Leader
Div. of Water Pollution Control

/ca
5-17-89