UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

MAR 0 1 2012

Mr. Phil Gaarder
Vice President and Manufacturing Manager
Flint Hills Resources Corpus Christi, LLC West Refinery
P. O. Box 2608
Corpus Christi, TX 78403

Re: Consent Agreement and Final Order
Docket No. CAA-06-2012-3503

Dear Mr. Gaarder:

Enclosed for your records is a copy of the fully executed Consent Agreement and Final Order (CAFO) for the Clean Air Act Section 112(r) violations found at the Flint Hills Resources Corpus Christi, LLC West Refinery facility located in Corpus Christi, Texas. Please note that if you have not yet paid the assessed penalty, payment is due no later than 30 days after the date it was signed by the Regional Judicial Officer.

If you have any questions regarding this matter, please do not hesitate to call. I may be reached by phone at (214) 665-6632 or by email at goodfellow.bob@epa.gov.

Sincerely,

Bob Goodfellow
Environmental Scientist
Response and Prevention Branch
EPA Region 6

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2012 MAR -8 AM 8:12
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	
Flint Hills Resources Corpus Christi, LLC West Refinery	DOCKET NO. CAA-06-2012-3503
Corpus Christi, TX	
RESPONDENT	

CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 (EPA), and Flint Hills Resources Corpus Christi, LLC West Refinery (Respondent), in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO against the Respondent pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall resolve only those violations and facts which are alleged herein.

5. The Respondent consents to the issuance of this CAFO, and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

6. The Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

7. The Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

II. STATUTORY AND REGULATORY BACKGROUND

8. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), provides in pertinent part:

> (A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.
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> * * * *
>
> (B) (ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the

> stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection.

9. In accordance with Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), EPA promulgated the Chemical Accident Prevention Provisions, which are codified at 40 C.F.R. Part 68. These regulations, commonly referred to as the "Risk Management Program" (RMP) regulations, contain requirements for owners or operators of stationary sources concerning the prevention of accidental chemical releases.

10. Pursuant to 40 C.F.R. § 68.10, the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the RMP regulations.

11. Pursuant to 40 C.F.R. § 68.12, the owner or operator of a stationary source with a process subject to the "Program 3" requirements of the RMP regulations must, among other things, comply with the prevention requirements of 40 C.F.R. Part 68, Subpart D.

12. Pursuant to Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), it is unlawful for any person to operate any stationary source subject to the Risk Management Program requirements and regulations in violation of such requirements and regulations.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

13. The Respondent is a Delaware limited liability company authorized to do business in the State of Texas.

14. The Respondent is a "person" as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

15. The Respondent owns and/or operates a petroleum refinery (North American Industrial Classification System Code 32411) located at 2825 Suntide Road, Corpus Christi, Texas 78409 (Facility).

16. The Respondent's petroleum refinery is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

17. The Respondent is the owner and/or operator of the stationary source identified in Paragraph 15.

18. At all times relevant to this CAFO, the Respondent was engaged in, among other things, petrochemical refining and specialty chemical manufacturing.

19. Hydrogen Fluoride and flammable mixtures having an NFPA rating of 4 are "regulated substances". 40 C.F.R. § 68.130

20. The Respondent's HF Alkylation Unit is a "process" as that term is defined by 40 C.F.R. § 68.3.

21. At all times relevant to this CAFO, the Respondent's HF Alkylation Unit had anhydrous hydrogen fluoride and flammable mixtures present above the "threshold quantity" of 1,000 and 10,000 pounds, respectively, as determined by 40 C.F.R. § 68.115.

22. The Respondent's HF Alkylation Unit is subject to Program Level 3 as defined in 40 C.F.R. § 68.10(d), and must, among other things, comply with the prevention requirements of 40 C.F.R. Part 68, Subpart D.

23. On or about June 15, 2009, an inspection of Respondent's Facility including the HF Alkylation Unit, identified in paragraphs 20 – 21, was conducted by representatives of EPA pursuant to Section 114 of the CAA, 42 U.S.C. § 7414 ("the Inspection").

24. Section 113(d)(1) of the CAA, authorizes EPA to bring an administrative action for penalties that exceed $295,000[1] and/or the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

25. EPA and the U.S. Department of Justice have jointly determined that the matter is appropriate for an administrative action.

B. VIOLATIONS

Count I - Failure to properly calculate the distance to toxic endpoint

26. 40 C.F.R. § 68. 20 requires the facility to prepare a worst-case release scenario (WCS). 40 CFR § 68.22 specifies the parameters which must be considered and 40 CFR § 68.25 discusses the method and assumptions that are to be used.

27. When the Respondent prepared its WCS for HF, it modeled a release of 305,000 lbs of 70% HF solution in water. In actuality, the chemical that should have been modeled was anhydrous HF. These two chemicals behave radically differently due to their different states and chemical nature. A release of that quantity of anhydrous HF would have resulted in a distance to toxic endpoint of approximately 22 miles. Using the 70% solution, FHR calculated a distance of 12 miles.

28. Therefore, the Respondent violated 40 C.F.R. § 68.25, by failing to properly calculate the distance to toxic endpoint.

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[1] The maximum penalty that can be assessed (without a waiver) under Section 113 of the Clean Air Act was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to $220,000 for violations occurring between January 30, 1997 and March 15, 2004, to $270,000 for violations occurring between March 15, 2004 and January 12, 2009, and to $295,000 for violations occurring after January 12, 2009.

Count II – Failure to retain supporting documentation for offsite consequence analysis

29. 40 CFR § 68.200 states "[t]he owner or operator shall maintain records supporting the implementation of this part for five years unless otherwise provided in subpart D of this part."

30. When asked to provide supporting documentation for the offsite consequence analyses, specifically, a discussion of the specific alternative scenarios analyzed, locations of the releases (given the size and complexity of the facility), documentation for determination of offsite public and environmental receptors, etc., the Respondent was unable to locate or provide any documentation other than RMP*Comp print-outs and LandView print-outs with population data.

31. Therefore, the Respondent violated 40 C.F.R. § 68.200, by failing to retain documentation supporting the alternative release scenario.

Count III - Failure to promptly address Process Hazard Analyses findings and recommendations

32. 40 CFR § 68.67 requires a covered facility to conduct a Process Hazard Analysis (PHA) on each covered process and "(f) At least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements in paragraph (d) of this section, to assure that the process hazard analysis is consistent with the current process. Updated and revalidated process hazard analyses completed to comply with 29 CFR 1910.119(e) are acceptable to meet the requirements of this paragraph." In addition to merely conducting the analysis, "(e) The owner or operator shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented;

document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions."

33. The Respondent has a process for conducting PHAs that meets the requirements for nature of the analysis, focus of the investigation, composition of the team, and timing of the PHAs to meet the five year update/revalidation. When asked for copies of any recent PHAs, the Respondent could not produce final reports or corrective action recommendations in follow-up to any PHAs conducted from mid-2008 until the date of the inspection. Subsequent to the inspection, Respondent revised its PHA process to ensure reports were completed in a timely manner.

34. Therefore, the Respondent violated 40 C.F.R. § 68.67, by failing to generate reports of the PHAs it had conducted or addressing the deficiencies it had identified.

Count IV - Failure to update the Emergency Contact information in a timely manner

35. 40 CFR § 68.195(b) requires facilities to correct the RMP when there is a change in the emergency contact information. Specifically, "[b]eginning June 21, 2004, within one month of any change in the emergency contact information required under § 68.160(b)(6), the owner or operator shall submit a correction of that information."

36. As of the date of the inspection, Mr. William Hurt had been designated by the Respondent as the emergency contact for more than one year. However, the RMP was not updated to reflect that change until June 17, 2009, after their oversight was brought to their attention by the inspector.

37. Therefore, the Respondent violated 40 C.F.R. § 68.195, by failing to timely update its emergency contact information.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

38. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d), which authorizes EPA to assess a civil penalty of up to twenty-five thousand dollars ($25,000)[2] per day for each violation of the CAA. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, it is ORDERED that Respondent be assessed a civil penalty in the amount of twenty-two thousand four hundred and 00/100 dollars ($22,400.00).

39. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire

[2] The maximum $25,000 per day penalty was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to $27,500 for violations occurring between January 30, 1997 and March 15, 2004, to $32,500 for violations occurring between March 15, 2004 and January 12, 2009, and to $37,500 for violations occurring after January 12, 2009.

transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077, U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" with a phone number of (412) 234-4381.

PLEASE NOTE: Docket number CAA-06-2012-3503 shall be clearly typed on the check, or other method of payment, to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket numbers of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Bob Goodfellow
Environmental Scientist/RMP Enforcement Officer
Superfund Prevention and Response Branch (6SF-PC)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

40. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

41. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

42. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's

administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

43. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

44. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

45. This Consent Agreement is considered a "prior violation" for the purpose of demonstrating a "history of noncompliance" under the Clean Air Act Stationary Source Penalty Policy.

B. RETENTION OF ENFORCEMENT RIGHTS

46. The EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions not subject to this action.

47. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

48. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

C. COSTS

49. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

D. COMPLIANCE

50. The Respondent hereby certifies that as of the date of the execution of this CAFO, the Facility has corrected the violations alleged in the Complaint.

E. EFFECTIVE DATE

51. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FEB 08 2012
RECEIVED
AM 9:13
SUPERFUND DIV.
RELEASE PREVENTION &
BRANCH

FOR THE RESPONDENT:

Date: 2/2/12

Phil Gaarder
Vice President and Manufacturing Manager
Flint Hills Resources Corpus Christi, LLC
West Refinery

FOR THE COMPLAINANT:

Date: 3-1-12

John Blevins
Director
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6

V. FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 3-7-12

Patrick Rankin
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of March, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Phil Gaarder
Vice President and Manufacturing Manager
Flint Hills Resources Corpus Christi, LLC West Refinery
P.O. Box 2608
Corpus Christi, TX 78403

Bob Goodfellow
Environmental Scientist
U.S. EPA – Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of May 2012, the original of the foregoing Final Order of Clean Air Act, Section 112(r) Expedited Settlement Agreement was hand delivered to the Regional Hearing Clerk, U. S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States mail, first class postage prepaid, addressed to the following:

Phil Gaarder
Vice President & Manufacturing Manager
Flint Hills Resources Corpus Christi, LLC West Refinery
P. O. Box 2608
Corpus Christi, TX 78403

E. Rogers

Elizabeth R. Rogers
RMP Compliance Officer
Prevention and Response Branch