

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2014 FEB -6 AM 9:05
REGIONAL OFFICE
EPA REGION VI

IN THE MATTER OF:)
)
)
ONA POLYMERS, L.L.C.) DOCKET NO. EPCRA-06-2014-0500
GARLAND, TEXAS)
)
RESPONDENT)
_____)

CONSENT AGREEMENT AND FINAL ORDER

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Ona Polymers, L.L.C. (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 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c), is simultaneously commenced and concluded by the issuance of this CAFO against the Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

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 which are set forth 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, successors, and assigns.

8. The Respondent hereby certifies that as of the date of the execution of this CAFO, Ona Polymers, L.L.C. has corrected the violations alleged in this CAFO and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

II. STATUTORY AND REGULATORY BACKGROUND

9. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that: (a) has ten or more full-time employees; (b) is an establishment with a primary SIC major group or industry code listed in 40 C.F.R. § 372.23(a), or a primary NAICS subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) “manufactured, processed, or otherwise used” a toxic chemical listed under Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Subsection 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, or 372.28 during the calendar year, to submit to EPA and the State in which the facility is located, a complete toxic chemical release inventory Form R in accordance with the

instructions set forth in 40 C.F.R. Part 372, Subpart E, for the preceding calendar year, for each toxic chemical known by the owner or operator to be “manufactured, processed, or otherwise used” in quantities exceeding the established threshold quantity during that preceding calendar year.

10. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30, is 25,000 pounds for any toxic chemical “manufactured or processed” and 10,000 pounds for any toxic chemical “otherwise used” for the applicable calendar year. Alternative reporting threshold for certain other chemicals are set forth in 40 C.F.R. §§ 372.27 and 372.28.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

11. The Respondent is a limited liability company incorporated under the laws of the State of Texas, and authorized to do business in Texas.

12. “Person” is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) as meaning “any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.”

13. The Respondent is a “person” as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

14. The Respondent owns and operates a polymers manufacturing facility located at 2326 Lonnecker Drive, Garland, Texas 75041.

15. "Facility" is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 as meaning "all buildings, equipment, structures, and other stationary source items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person)."

16. The manufacturing facility identified in Paragraph 14 is a "facility", as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

17. "Full-time employee" is defined by 40 C.F.R. § 372.3 as meaning "2000 hours per year of full-time equivalent employment. A facility would calculate the number of full-time employees by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2000 hours."

18. The Respondent's facility has ten (10) or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3.

19. The Respondent's facility is in NAICS subsector or industry code 325211.

20. NAICS subsector or industry code 325211 is listed in 40 C.F.R. § 372.23(b).

21. Acrylic acid, butyl acrylate, ethyl acrylate, methyl methacrylate, n-methylolacrylamide, styrene, and vinyl acetate are "toxic chemicals" within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

B. VIOLATIONS

Count One – Failure to Timely Submit Form Rs for Calendar Year 2007

22. During calendar year 2007, the Respondent "manufactured, processed, and/or otherwise used" the following toxic chemicals at the Respondent's facility in excess of the applicable threshold quantities:

- A. acrylic acid;
- B. butyl acrylate;
- C. ethyl acrylate;
- D. methyl methacrylate;
- E. n-methylolacrylamide; and
- F. vinyl acetate.

23. The Respondent failed to submit Form Rs to EPA and the State of Texas for acrylic acid, butyl acrylate, ethyl acrylate, methyl methacrylate, n-methylolacrylamide, and vinyl acetate, by July 1, 2008.

24. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit timely, complete, and accurate Form Rs for acrylic acid, butyl acrylate, ethyl acrylate, methyl methacrylate, n-methylolacrylamide, and vinyl acetate for calendar year 2007 to EPA and to the State of Texas by July 1, 2008.

Count Two – Failure to Timely Submit Form Rs for Calendar Year 2008

25. During calendar year 2008, the Respondent “manufactured, processed, and/or otherwise used” the following toxic chemicals at the Respondent’s facility in excess of the applicable threshold quantities:

- A. acrylic acid;
- B. butyl acrylate;
- C. ethyl acrylate;
- D. methyl methacrylate;
- E. n-methylolacrylamide; and
- F. vinyl acetate.

26. The Respondent failed to submit Form Rs to EPA and the State of Texas for acrylic acid, butyl acrylate, ethyl acrylate, methyl methacrylate, n-methylolacrylamide, and vinyl acetate, by July 1, 2009.

27. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit timely, complete, and accurate Form Rs for acrylic

acid, butyl acrylate, ethyl acrylate, methyl methacrylate, n-methylolacrylamide, and vinyl acetate for calendar year 2008 to EPA and to the State of Texas by July 1, 2009.

Count Three – Failure to Timely Submit Form Rs for Calendar Year 2009

28. During calendar year 2009, the Respondent “manufactured, processed, and/or otherwise used” the following toxic chemicals at the Respondent’s facility in excess of the applicable threshold quantities:

- A. acrylic acid;
- B. butyl acrylate;
- C. ethyl acrylate;
- D. methyl methacrylate;
- E. n-methylolacrylamide; and
- F. vinyl acetate.

29. The Respondent failed to submit Form Rs to EPA and the State of Texas for acrylic acid, butyl acrylate, ethyl acrylate, methyl methacrylate, n-methylolacrylamide, and vinyl acetate, by July 1, 2010.

30. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit timely, complete, and accurate Form Rs for acrylic acid, butyl acrylate, ethyl acrylate, methyl methacrylate, n-methylolacrylamide, and vinyl acetate for calendar year 2009 to EPA and to the State of Texas by July 1, 2010.

Count Four – Failure to Timely Submit Form Rs for Calendar Year 2010

31. During calendar year 2010, the Respondent “manufactured, processed, and/or otherwise used” the following toxic chemicals at the Respondent’s facility in excess of the applicable threshold quantities:

- A. acrylic acid;
- B. butyl acrylate;
- C. ethyl acrylate;
- D. methyl methacrylate;
- E. n-methylolacrylamide;

- F. styrene; and
- G. vinyl acetate.

32. The Respondent failed to submit Form Rs to EPA and the State of Texas for acrylic acid, butyl acrylate, ethyl acrylate, methyl methacrylate, n-methylolacrylamide, styrene, and vinyl acetate, by July 1, 2011.

33. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit timely, complete, and accurate Form Rs for acrylic acid, butyl acrylate, ethyl acrylate, methyl methacrylate, n-methylolacrylamide, styrene, and vinyl acetate for calendar year 2010 to EPA and to the State of Texas by July 1, 2011.

Count Five – Failure to Timely Submit Form Rs for Calendar Year 2011

34. During calendar year 2011, the Respondent “manufactured, processed, and/or otherwise used” the following toxic chemicals at the Respondent’s facility in excess of the applicable threshold quantities:

- A. acrylic acid;
- B. butyl acrylate;
- C. ethyl acrylate;
- D. methyl methacrylate;
- E. n-methylolacrylamide;
- F. styrene; and
- G. vinyl acetate.

35. The Respondent failed to submit Rs to EPA and the State of Texas for acrylic acid, butyl acrylate, ethyl acrylate, methyl methacrylate, n-methylolacrylamide, styrene, and vinyl acetate, by July 2, 2012.¹

36. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit timely, complete, and accurate Form Rs for acrylic

¹ The Form Rs for RY 2011 were due on July 2, 2012, because July 1, 2012 was a Sunday.

acid, butyl acrylate, ethyl acrylate, methyl methacrylate, n-methylolacrylamide, styrene, and vinyl acetate for calendar year 2011 to EPA and to the State of Texas by July 2, 2012.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

37. The Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), which authorizes EPA to assess a civil penalty of up to Thirty-Seven Thousand Five Hundred Dollars (\$37,500) per day for each violation of Section 313 of EPCRA.² 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 nature, circumstances, extent and gravity of the alleged violations, and with respect to the Respondent, ability to pay, lack of prior EPCRA Section 313 violations, its good faith efforts to comply, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and other factors as justice may require, it is **ORDERED** that the Respondent be assessed a civil penalty of **ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000)**. The Respondent shall pay the assessed civil penalty in thirteen (13) payments as follows:

Payment No. 1 - \$11,714.52 within thirty (30) days of the effective date of the CAFO.

Payment No. 2 - \$11,714.52 (\$11,368.81 civil penalty plus interest of \$345.71) within 90 days of the effective date of the CAFO.

² The amount of penalty that can be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$27,500 per day of violation, for violations occurring between January 30, 1997 and March 15, 2004, and \$32,500 per day of violation for violations which occurred between March 15, 2004 and January 12, 2009, and to \$37,500 per day of violation for violations which occurred after January 12, 2009.

Payment No. 3 - \$11,714.52 (\$11,390.18 civil penalty plus interest of \$324.34) within 180 days of the effective date of the CAFO.

Payment No. 4 - \$11,714.52 (\$11,419.29 civil penalty plus interest of \$295.23) within 270 days of the effective date of the CAFO.

Payment No. 5 - \$11,714.52 (\$11,451.36 civil penalty plus interest of \$263.16) within 1 year of the effective date of the CAFO.

Payment No. 6 - \$11,714.52 (\$11,482.88 civil penalty plus interest of \$231.64) within 15 months of the effective date of the CAFO.

Payment No. 7 - \$11,714.52 (\$11,507.08 civil penalty plus interest of \$207.44) within 18 months of the effective date of the CAFO.

Payment No. 8 - \$11,714.52 (\$11,536.48 civil penalty plus interest of \$178.04) within 21 months of the effective date of the CAFO.

Payment No. 9 - \$11,714.52 (\$11,567.58 civil penalty plus interest of \$146.94) within 2 years of the effective date of the CAFO.

Payment No. 10 - \$11,714.52 (\$11,596.82 civil penalty plus interest of \$117.70) within 27 months of the effective date of the CAFO.

Payment No. 11 - \$11,714.52 (\$11,625.16 civil penalty plus interest of \$89.36) within 30 months of the effective date of the CAFO.

Payment No. 12 - \$11,714.52 (\$11,654.87 civil penalty plus interest of \$59.65) within 33 months of the effective date of the CAFO.

Payment No. 13 - \$11,714.52 (\$11,684.97 civil penalty plus interest of \$29.54) within 3 years of the effective date of the CAFO.

38. 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 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 US EPA Fines & Penalties
1005 Convention Plaza
SI-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"

PLEASE NOTE: Docket number EPCRA-06-2014-0500 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 number 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:

Morton Wakeland
EPCRA 313 Enforcement Coordinator
Toxics Section (6PD-T)
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.

39. 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.

40. 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).

41. 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.

42. This document is a “Final Order” as that term is defined in the “Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990),” dated August 10, 1992; Amended, April 21, 2001; for the purpose of demonstrating a history of “prior such violations”.

B. RETENTION OF ENFORCEMENT RIGHTS

43. 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.

44. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

45. Except as specifically provided in this CAFO, nothing herein 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

46. 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.

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

FOR THE RESPONDENT:

Date: 1-26-14

Leslie Charron
Ona Polymers, L.L.C.

FOR THE COMPLAINANT:

Date: 1/30/14


A handwritten signature in blue ink that reads "Wren Stenger". The signature is written in a cursive style and is positioned above a horizontal line.

Wren Stenger
Director
Multimedia Planning and
Permitting Division
U.S. EPA – Region 6

V. FINAL ORDER

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), 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, directors, employees, agents, servants, successors, and 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 2-3-14


Patrick Rankin
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of February, 2014, 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 individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED # 7007 0710 0002 1385 1521

Eric Groten
Vinson & Elkins L.L.P.
2810 Via Fortuna
Suite 100
Austin, TX 78746-7568

