UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

In the Matter of	§	
	§	
Kaneka North America LLC,	§	**Docket No. CAA-06-2023-3308**
	§	
	§	
Respondent.	§	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 6 ("EPA" or "Complainant"), and Kaneka North America LLC ("Respondent") have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d).

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that the Respondent has violated the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that the Respondent is therefore in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to

Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.34, of the EPA's intent to issue an order assessing penalties for these violations.

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division of EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. The Respondent is Kaneka North America LLC, a company formed and conducting business in the state of Texas.

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The objective of Section 112(r) is to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

6. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), commonly referred to as the General Duty Clause, owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty in the same manner and the same extent as the Occupational Safety and Health Act, 29 U.S.C. § 654 et. seq., to identify hazards which may result from accidental releases using appropriate hazard assessment techniques, to design and maintain a safe facility, taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

7. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), requires the Administrator

to promulgate a list of regulated substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires the Administrator to establish a threshold quantity for any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The list of regulated substances and respective threshold quantities is codified at 40 C.F.R. § 68.130.

8. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for stationary sources with threshold quantities of regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68 – Chemical Accident Prevention Provisions, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

9. The regulations at 40 C.F.R. Part 68 require owners and operators to develop and implement a Risk Management Program at each stationary source with over a threshold quantity of regulated substances. The Risk Management Program must include, among other things, a hazard assessment, a prevention program, and an emergency response program. The Risk Management Program is described in a Risk Management Plan (RMP) that must be submitted to the EPA.

10. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source subject to 40 C.F.R. Part 68 no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

11. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident

Prevention Provisions of 40 C.F.R. Part 68 apply to each program level of covered processes. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and if it is in a specified North American Industrial Classification System code or is subject to the Occupational Safety and Health Administration (OSHA) process safety management standard, 29 C.F.R. 1910.119.

12. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to $37,500 for violations that occurred before November 2, 2015, and to $51,796 for violations that occur after November 2, 2015, and are assessed after January 12, 2022.

Definitions

13. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines "person" to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

14. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and the regulation at 40 C.F.R. § 68.3 defines "accidental release" as an unanticipated emission of a regulated

substance or other extremely hazardous substance into the ambient air from a stationary source.

15. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3 defines "stationary source," in part, as any buildings, structures, equipment, installations or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

16. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3 define "regulated substance" as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

17. The regulation at 40 C.F.R. § 68.3 defines "threshold quantity" as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

18. The term "extremely hazardous substance" means an extremely hazardous substance within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Such substances include any chemical which may, as a result of short-term exposures associated with releases to the air, cause death, injury, or property damage due to its toxicity, reactivity, flammability or corrosivity.[1] The term includes, but is not limited to, regulated substances listed in Section 112(r)(3), 42 U.S.C. § 7412(r)(3), and 40 C.F.R. 68.130. Also, the release of any substance that causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or that causes substantial property damage by blast, fire, corrosion, or other

[1] Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Sen. Report No. 228, 101st Congress, 1st Session 211 (1989).

reaction would create a presumption that such substance is extremely hazardous.[2]

19. The regulation at 40 C.F.R. § 68.3 defines "process" as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

20. The regulation at 40 C.F.R. § 68.3 defines "covered process" as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

EPA Findings of Fact and Conclusions of Law

21. The Respondent is, and at all times referred to herein was, a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

22. The Respondent is the owner and operator of a facility located at: 6161 Underwood Road, Pasadena, TX, 77507 (the "Facility").

23. On February 2, 2022, there was an incident at the Facility that resulted in an accidental release of 770lbs of 1, 3-Butadiene ("Incident 1").

24. On May 7, 2022, there was another incident at the Facility that resulted in an accidental release of approximately 60lbs of 1, 3-Butadiene ("Incident 2").

25. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, the EPA conducted a desktop investigation of the Facility beginning on or about April 2022, to determine the Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 (the "Investigation").

---

[2] Id.

26. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, on multiple occasions, the EPA requested, and the Respondent provided, further documentation and information concerning both Incident 1, Incident 2, and the Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

27. On May 18, 2022, the EPA sent the Respondent a Notice of Potential Violation and Opportunity to Confer letter.

28. On June 13, 2022, the EPA met with the Respondent as a result of the opportunity to confer and articulated the EPA's position concerning the Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r) regarding Incident 1.

29. On July 18, 2022, the EPA met again with the Respondent to review the EPA's position concerning Incident 1, as well as articulated EPA's position concerning the Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r) regarding Incident 2.

30. The Respondent agreed to the violations from Incident 1 on July 21, 2022, and agreed to the violations from Incident 2 on August 3, 2022.

31. The Facility is a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3.

32. The Respondent operates plastics material and resin manufacturing processes at the Facility that produces polymers used in various applications and products, meeting the definition of "process", as defined by 40 C.F.R. § 68.3.

33. As a result, the Respondent produces, processes, handles, and stores 1, 3-Butadiene, Chlorine, Propylene oxide, and Acrylonitrile at the Facility.

34. 1, 3-Butadiene, Chlorine, Propylene oxide, and Acrylonitrile are substances listed

pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), in 40 C.F.R. § 68.130.

35. From the time the Respondent first produced, processed, handled, or stored the listed substances at the Facility, the Respondent was subject to the requirements of the General Duty Clause in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

36. 1, 3-Butadiene, Chlorine, Propylene oxide, and Acrylonitrile are "regulated substances" pursuant to Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3. The threshold quantity for 1, 3-Butadiene and Propylene oxide as listed in 40 C.F.R. § 68.130 is 10,000 pounds. The threshold quantity for Chlorine as listed in 40 C.F.R. § 68.130 is 2,500 pounds. The threshold quantity for Acrylonitrile as listed in 40 C.F.R. § 68.130 is 20,000 pounds.

37. The Respondent has greater than a threshold quantity of 1, 3-Butadiene, Chlorine, Propylene oxide, and Acrylonitrile in a process at the Facility, meeting the definition of "covered process" as defined by 40 C.F.R. § 68.3.

38. From the time the Respondent first had on-site greater than a threshold quantity of 1, 3-Butadiene Chlorine, Propylene oxide, and Acrylonitrile in a process, the Respondent was subject to the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68 because it was the owner or operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

39. From the time the Respondent first had on-site greater than a threshold quantity of 1, 3-Butadiene Chlorine, Propylene oxide, and Acrylonitrile in a process, the Respondent was required to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 prevention requirements because pursuant to 40 C.F.R. § 68.10(i), the covered process at the Facility did not meet the eligibility requirements of Program 1 and is in North American Industry

Classification System code 325211.

EPA Findings of Violation

40. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

41. Complainant hereby states and alleges that the Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

Count 1 – Process Hazard Analysis

42. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.67(e), the owner or operator shall establish a system to promptly address the process hazard analyses 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.

43. The Respondent failed to complete twenty-eight (28) items of its 2020 Process Hazard Analysis for MA 1/2 and MA 3 by the recommended due dates. MA 1/2 had two (2) overdue items and MA 3 had twenty-six (26) overdue items.

44. The Respondent's failure to assure that the recommendations of its Process Hazard Analysis are resolved in a timely manner pursuant to 40 C.F.R. § 68.67(e), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2 – Operating Procedures

45. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.69(a)(1)(ii), the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements: (1) Steps for each operating phase: (ii) Normal operations.

46. The Respondent failed to implement its written normal operations - operating procedures regarding the manual closure of two valves during an HQ replacement.

47. The Respondent's failure to implement its written normal operations - operating procedures pursuant to 40 C.F.R. § 68.69(a)(1)(ii), as required by 40 C.F.R. § 68.12(d)(3), along with the normal activation of the safety system is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3 – Operating Procedures (process equipment)

48. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.69(d), the owner or operator shall develop and implement safe work practices to provide for the control of hazards during operations such as lockout/tagout; confined space entry; opening process equipment or piping; and control over entrance into a stationary source by maintenance, contractor, laboratory, or other support personnel. These safe work practices shall apply to employees and contractor employees.

49. The Respondent failed to follow the established Job Safety Analysis ("JSA")

procedure (N-0-SH-OP-06 Non-Routine Work Job Safety Analysis JSA) when performing non-routine work. The JSA procedure outlines a technique to identify job task related hazards before they occur. By directing that jet valve testing continue without a JSA, the Respondent did not fully understand potential hazards or effectively mitigate said hazards. Furthermore, the Respondent did not follow the operating procedure requiring minimization of activities in manual mode and the entry of manual mode activities into the Manual Intervention Logbook.

50. The Respondent's failure to implement safe work practices to provide for the control of hazards during operations, pursuant to 40 C.F.R. § 68.69(d), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 4 – Management of Change

51. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.75(e), [i]f a change covered by this paragraph results in a change in the operating procedures or practices required by § 68.69, such procedures or practices shall be updated accordingly.

52. The Respondent failed to complete a Management of Change addressing discontinuing the practice of using a Manual Intervention Logbook for any activity involving manual intervention, although the use of manual mode and manual interventions continued.

53. The Respondent's failure to perform a Management of Change for discontinuing the practice of using a Manual Intervention Logbook for any activity involving manual intervention, pursuant to 40 C.F.R. § 68.75(e), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 5 – Emergency Response Coordination

54. The regulation at 40 C.F.R. § 68.12(d)(5) requires the owner or operator of a stationary source with a process subject to Program 3 to develop and implement an emergency response program, and conduct exercises, as provided in 40 C.F.R. §§ 68.90 through 68.96. Pursuant to 40 C.F.R. § 68.93(c), the owner or operator shall document coordination with local authorities, including: The names of individuals involved and their contact information (phone number, email address, and organizational affiliations); dates of coordination activities; and nature of coordination activities.

55. The Respondent failed to adequately document emergency coordination activities with local emergency responders.

56. The Respondent's failure to maintain emergency coordination records pursuant to 40 C.F.R. § 68.93(c), as required by 40 C.F.R. § 68.12(d)(5), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 6 – Emergency Response Program

57. The regulation at 40 C.F.R. § 68.12(d)(5) requires the owner or operator of a stationary source with a process subject to Program 3 to develop and implement an emergency response program, and conduct exercises, as provided in 40 C.F.R. §§ 68.90 through 68.96. Pursuant to 40 C.F.R. § 68.95(a)(1), the owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment. Such program shall include the following elements: (1) An emergency response plan, which shall be maintained at the stationary source and contain at least the following elements: (i) Procedures for informing the public and the appropriate Federal, state, and local emergency response agencies about accidental releases; (ii) Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; (iii) Procedures and measures for

emergency response after an accidental release of a regulated substance.

58. The Respondent failed to implement its emergency response program, pursuant to 40 C.F.R. § 68.95(a)(1)(i), when it did not utilize the Emerge system to inform the community of the toxic release that occurred May 7, 2022. Pursuant to 40 C.F.R. § 68.95(a)(1)(ii), the Respondent failed to develop its emergency response program by not covering specific hazards associated with chemicals present at the facility, including exposure to 1, 3-Butadiene, Chlorine, Propylene oxide, Acrylonitrile, or burn treatment in the event of a fire and explosion. Lastly, the Respondent failed to develop and implement its emergency response program, pursuant to 40 C.F.R. § 68.95(a)(1)(iii), by not including procedures for responding to an emergency while only wearing standard PPE, failing to trigger the plant alarm upon awareness of a hazardous chemical release, failing to provide medical attention following exposure to hazardous chemicals, and by facility employees failing to promptly inform safety personnel of the hazardous chemical release of 1, 3-Butadiene.

59. The Respondent's failure to develop and implement multiple components of its emergency response program pursuant to 40 C.F.R. § 68.95(a)(1), as required by 40 C.F.R. § 68.12(d)(5), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 7 – Emergency Response Program

60. The regulation at 40 C.F.R. § 68.12(d)(5) requires the owner or operator of a stationary source with a process subject to Program 3 to develop and implement an emergency response program, and conduct exercises, as provided in 40 C.F.R. §§ 68.90 through 68.96. Pursuant to 40 C.F.R. § 68.95(a)(2), the owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment. Such program shall include the following elements: (2) Procedures for the use of emergency

response equipment and for its inspection, testing, and maintenance.

61. The Respondent failed to include procedures for the use, inspection, testing and maintenance of emergency response equipment kept on site.

62. The Respondent's failure to develop its emergency response program with the inclusion of procedures for the use, inspection, testing, and maintenance of emergency response equipment pursuant to 40 C.F.R. § 68.95(a)(2), as required by 40 C.F.R. § 68.12(d)(5), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 8 – General Duty Clause (identify hazards)

63. The Clean Air Act Section 112(r)(1), 42 U.S.C. § 7412(r)(1), imposes a general duty on the owners and operators of stationary sources producing, processing, handling or storing [a chemical in 40 C.F.R. Part 68 or any other extremely hazardous substance] to identify hazards which may result from (such) releases using appropriate hazard assessment techniques.

64. One of the hazards associated with opening process equipment is the potential for residual flammable substances to be present in the equipment. Thus, the Respondent has a duty to identify and control potential ignition sources to reduce or eliminate the risk of fire or exposure.

65. The Respondent failed to meet the general duty clause because the facility could not detect the 1, 3-Butadiene concentration that was present in the manway, absent an employee haphazardly smelling the chemical or already knowing about its presence. The Respondent did not have any detection equipment to adequately identify and control the potential ignition source that arose from the release of 1, 3-Butadiene.

66. The Respondent's failure to identify and control hazards, such as a potential ignition source, which may result from such releases using appropriate hazard assessment

techniques is a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 9 – General Duty Clause (design and maintain)

67. The Clean Air Act Section 112(r)(1), 42 U.S.C. § 7412(r)(1), imposes a general duty on the owners and operators of stationary sources producing, processing, handling or storing [a chemical in 40 C.F.R. part 68 or any other extremely hazardous substance] to design and maintain a safe facility taking such steps as are necessary to prevent releases.

68. Pursuant to the National Fire Protection Association (NFPA) 17.8.3.2.1, when placing lower explosive limit (LEL) detectors at a facility an evaluation is required to ensure that the placement is tailored to the specific facility and the chemical(s) used in its processes.

69. The Respondent failed to meet the general duty clause because at the time of both incidents. The Respondent never completed an evaluation for the optimal placement of LEL detectors at its Pasadena facility. Furthermore, during both Incident 1 and 2 no LEL detectors were activated although significant quantities of 1, 3-Butadiene (770lbs and 60lbs respectively) were released into the environment.

70. The Respondent's failure to design and maintain a safe facility taking such steps as are necessary to prevent releases, by failing to perform an evaluation of LEL detector placement, and failing to design the facility to adequately detect the specific chemicals utilized in its processes is a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 10 – General Duty Clause (minimize consequences)

71. The Clean Air Act Section 112(r)(1), 42 U.S.C. § 7412(r)(1), imposes a general duty on the owners and operators of stationary sources producing, processing, handling or storing [a chemical in 40 C.F.R. Part 68 or any other extremely hazardous substance] to minimize the consequences of accidental releases which do occur.

72. The Respondent failed to meet the general duty clause because the Respondent lacked adequate guidance for responding to accidental releases that occur at the Pasadena facility including how to respond when an operator is not in the proper PPE, when and how to trigger the plant alarms, when and how to evacuate the area, and procedures for controlling the source of an accidental release when it does occur.

73. The Respondent's failure to minimize the consequences of accidental releases which do occur, by failing to provide clear direction to the Respondent's employees on how to respond to an accidental release of 1, 3-Butadiene (or any other hazardous chemical), resulted in additional exposure to employees and is a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

CONSENT AGREEMENT

74. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), the Respondent:

a. admits the jurisdictional allegations set forth herein;

b. neither admits nor denies the specific factual allegations stated herein;

c. consents to the assessment of a civil penalty, as stated herein;

d. consents to the performance of the Supplemental Environmental Project (SEP) set forth herein;

e. consents to the issuance of any specified compliance or corrective action order;

f. consents to any conditions specified herein;

g. consents to any stated Permit Action;

h. waives any right to contest the allegations set forth herein; and

i. waives its rights to appeal the Final Order accompanying this Consent Agreement.

75. The Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

76. The Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

77. The Respondent agrees that, in settlement of the claims alleged herein, the Respondent shall pay a civil penalty of **One-Hundred Eighteen-Thousand Two-Hundred Seventy-Seven Dollars** ($118,277).

78. The Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at *http://www.epa.gov/financial/makepayment*.

79. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Lorena S. Vaughn
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ORC)
Dallas, Texas 75270-2102
vaughn.lorena@epa.gov; and

Elizabeth Rogers
Enforcement Officer
Air Enforcement Branch

Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ECDAC)
Dallas, Texas 75270-2101
rogers.elizabeth@epa.gov

80. The Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

SUPPLEMENTAL ENVIRONMENTAL PROJECT

81. The Respondent shall implement a Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvement. The SEP involves the purchase and installation of Portable Emissions Monitors, Fixed IR Perimeter Monitors, and a Thermal Imaging Camera to be integrated into the facility's emissions management system within the property boundaries. The equipment to be purchased and installed and the Respondent's costs of performing the SEP are described in more detail in Attachment A to this Consent Agreement and Final Order. All equipment shall be installed no later than eighteen (18) months from the effective date of this Consent Agreement and Final Order.

82. The SEP advances at least one of the objectives of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), by preventing the accidental release of regulated substances and minimizing the consequences of any such release through the operation of new emissions monitors and cameras to allow for early leak detection. The SEP is not inconsistent with any provision of 112(r) of the CAA, 42 U.S.C. § 7412(r). The SEP relates to the alleged violation(s), and is designed to reduce:

a. The likelihood that similar chemical releases will occur in the future as the equipment will enable Kaneka to continuously monitor its 1, 3-Butadiene processes to detect early signs of release and respond quickly to minimize the consequences if/when such a release occurs;

b. The adverse impact to public health and/or the environment to which the alleged violations contribute, specifically the SEP will enable Kaneka to continuously monitor its multiple facility areas, to detect early, and respond quickly if a detectable release occurs; and

c. The overall risk to public health and/or the environment potentially affected by the alleged violations by enabling Kaneka to know whether hazards are present in the area, as well as enabling the facility to quickly and effectively respond to any leaks or vapors present to prevent both onsite and offsite exposure.

83. The Respondent is responsible for the satisfactory completion of the SEP described in the foregoing Paragraph 81 and Attachment A. The total expenditure for the SEP described above shall be no less than **Three Hundred Eighty-Six Thousand Dollars** ($386,000). The Respondent hereby certifies that the cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate, and that the Respondent in

good faith estimates that the cost to implement the SEP is $386,000. The Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

84. The Respondent hereby certifies that as of the date of this Consent Agreement and Final Order, the Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is the Respondent required to perform or develop the SEP by any other agreement, grant, or as injunctive relief in this or any other case. The Respondent further certifies that the SEP is not a project that the Respondent was planning or intending to construct, perform, or implement other than in settlement of this action. Finally, the Respondent certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for this SEP, and that the Respondent will not receive reimbursement for any portion of the SEP from another person or entity.

85. The Respondent also certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 81 and Attachment A.

86. Any public statement, oral or written, in print, film, or other media, made by the Respondent referencing the SEP under this Consent Agreement and Final Order from the date of its execution of this Consent Agreement and Final Order shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action against Kaneka taken on behalf of the EPA to enforce federal laws."

87. For federal income tax purposes, the Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

SEP Completion Report

88. The Respondent shall submit a SEP Completion Report to EPA within thirty (30) days after completion of the SEP under this Consent Agreement and Final Order. The SEP Completion Report shall contain the following information:

A. A detailed description of the SEP as implemented;

B. A description of any operating or logistical problems encountered and the solutions thereto;

C. Itemized final costs with copies of receipts for all expenditures;

D. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and

E. A description of the environmental, emergency preparedness, and/or public health benefits resulting from implementation of the SEP.

The Respondent agrees that failure to timely submit the final SEP Completion Report shall be deemed a violation of this Consent Agreement and Final Order subject to stipulated penalties pursuant to Paragraphs 93E.

89. In itemizing its costs in the SEP Completion Report, the Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

90. The Respondent shall submit the following certification in the SEP Completion Report, signed by a responsible corporate official:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

91. After receipt of the SEP Completion Report described above, EPA will notify the Respondent, in writing: (a) regarding any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for the Respondent to correct any deficiencies; or (b) to indicate that EPA concludes that the SEP has been completed satisfactorily; or (c) to determine that the SEP has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraphs 93-95 below.

92. If EPA elects to exercise option (a) in Paragraph 91 above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, then EPA shall permit the Respondent the opportunity to object in writing to the notification of deficiency given pursuant to Paragraph 90 within fifteen (15) days of receipt of such notification. EPA and the Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to the Respondent, which decision shall be final and binding upon the Respondent. The

Respondent agrees to comply with any requirements imposed by EPA necessary to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as reasonably contemplated herein, stipulated penalties shall be due and payable by the Respondent to EPA in accordance with Paragraphs 93-97 herein.

Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-On Amount

93. In the event that the Respondent fails to comply with any of the terms or provisions of this Consent Agreement and Final Order relating to the performance of the SEP described in Paragraph 81 and Attachment A of this Consent Agreement and Final Order and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEPs described above, the Respondent shall be liable for stipulated penalties according to the provisions set forth below:

A. Except as provided in subparagraph (B) immediately below, if the SEP has not been completed within eighteen (18) months of the Effective Date of the Consent Agreement and Final Order and the Respondent has not made good faith and timely efforts to complete the project satisfactorily, pursuant to this Consent Agreement and Final Order, the Respondent shall pay a stipulated penalty to the United States in the amount of $386,000. Payment by the Respondent of the stipulated penalty pursuant to Paragraph 93A shall constitute full performance of the SEP and shall excuse any other stipulated penalty arising under this Consent Agreement and Final Order.

B. If the SEP is not completed in accordance with Paragraph 81 and Attachment A, but EPA determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the

amount of money which was required to be spent was expended on the SEP, the Respondent shall not be liable for any stipulated penalty.

C. If the SEP is completed in accordance with Paragraph 81 and Attachment A, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, the Respondent shall pay a stipulated penalty, along with accrued interest, to the United States that shall reflect, dollar for dollar, the difference between the cost expended on the SEP and the agreed cost of $386,000.

D. If the Respondent fails to timely complete the SEP (not including the SEP Completion Report) for any reason, the Respondent shall pay stipulated penalties as follows:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 2,500

E. For failure to submit the required SEP Completion Report required by Paragraph 88 above, the Respondent shall pay a stipulated penalty in the amount of $500 for each day after the report was originally due, until the report is submitted.

94. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole determination of EPA.

95. Stipulated penalties for Paragraphs 93D and E above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.

96. The Respondent shall pay stipulated penalties not more than thirty (30) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraphs 78-79 herein.

97. The EPA may, in its unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement and Final Order.

Dispute Resolution

98. If the Respondent objects to any decision or directive of EPA, the Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Chief, Chemical Accident Enforcement Section
Enforcement and Compliance Assurance Division
U.S. EPA - Region 6
1201 Elm St, Suite 500, ECDAC
Dallas, TX 75270

Chief, RCRA & Toxics Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1201 Elm St., Suite 500
Dallas, TX 75270

99. The Chemical Accident Enforcement Section Chief (Chief) or his designee, and the Respondent shall then have an additional fifteen (15) calendar days from receipt by EPA of the Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Chief and the Respondent, the agreement shall be reduced to writing and signed by the Chief and the Respondent and incorporated by reference into this Consent Agreement and Final Order.

100. If no agreement is reached between the Chief and the Respondent within that time period, the dispute shall be submitted to the Director of the Enforcement and Compliance

Assurance Division (Division Director) or his designee. The Division Director and the Respondent shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, the resolution shall be reduced to writing and signed by the Division Director and the Respondent and incorporated by reference into this Consent Agreement and Final Order. If the Division Director and the Respondent are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the Consent Agreement and Final Order.

Notification

101. Unless otherwise specified elsewhere in this Consent Agreement and Final Order, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individual specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA: Elizabeth Rogers
Air Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 6
1202 Elm Street, Suite 500 (ECDAC)
Dallas, Texas 75270-2102
rogers.elizabeth@epa.gov

Respondent: Dena Taylor
Compliance Systems Manager
Kaneka North America LLC
6161 Underwood Road,
Pasadena, TX, 77507
dena.taylor@kaneka.com

Jed Anderson
Attorney and Environmental Entrepreneur
The AL Law Group PLLC
4321 Kingwood Drive, Suite 170
Kingwood, TX 77339
jed@allawgp.com

Modification

102. The terms, conditions, and compliance requirements of this Consent Agreement and Final Order may not be modified or amended except as otherwise specified in this Consent Agreement and Final Order, or upon the written agreement of EPA and the Respondent, and such modification or amendment being filed with the Regional Hearing Clerk.

Termination

103. At such time as the Respondent believes that it has complied with all terms and conditions of this Consent Agreement and Final Order, the Respondent may request that EPA advise whether this Consent Agreement and Final Order has been satisfied and terminated. EPA will respond to said request as expeditiously as possible. This Consent Agreement and Final Order shall terminate when all actions required to be taken by this Consent Agreement and Final Order have been completed, and the Respondent has been notified by the EPA in writing that this Consent Agreement and Final Order has been satisfied and terminated.

No EPA Liability

104. Neither EPA nor the United States Government shall be liable for any injuries or damages to persons or property resulting from acts or omissions of the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns or contractors in carrying out activities pursuant to this Consent Agreement and Final Order, not shall the EPA or

the United States Government be held as a party to any contract entered into by the Respondent in carrying out activities pursuant to this Consent Agreement and Final Order.

Effect of Settlement and Reservation of Rights

105. Full payment of the penalty proposed in this Consent Agreement shall only resolve the Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

106. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of the Respondent's representations to the EPA, as memorialized in paragraph directly below.

107. The Respondent certifies by the signing of this Consent Agreement that to the best of its knowledge it is presently in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), save and except as reflected in the Administrative Order for Compliance on Consent, Docket No. CAA-06-2023-3309. Fulfillment of the terms of the Administrative Order for Compliance on Consent is intended to bring the Respondent into full compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r). The requirement by EPA that the Respondent perform the terms of the Administrative Order on Consent is intended to constitute diligent prosecution of the claims alleged in this Consent Agreement and Final Order and in the Administrative Order on Consent.

108. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect the Respondent's obligation to

comply with all applicable provisions of the CAA and regulations promulgated thereunder.

109. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

110. By signing this Consent Agreement, the undersigned representative of the Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

111. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

112. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

113. This Consent Agreement and Final Order shall apply to and be binding upon the Respondent and the Respondent's agents, successors and/or assigns. The Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for the Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

114. The EPA and the Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and the Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA:

khalsa.dharma@epa.gov
pittman.lawrence@epa.gov

To Respondent:

jed@allawgp.com
dena.taylor@kaneka.com

RESPONDENT:
KANEKA NORTH AMERICA LLC

Date: 11/28/2022 | 1:22 PM CST

DocuSigned by:
Steve Kahara
3390FF8E66D644A...
Signature

Steven Kahara
Print Name

President
Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: November 29, 2022

Cheryl T. Seager
Digitally signed by CHERYL SEAGER
Date: 2022.11.29 12:26:04 -06'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

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 and the Revocation/ Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

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 the 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.

IT IS SO ORDERED.

THOMAS RUCKI

Digitally signed by THOMAS RUCKI
DN: c=US, o=U.S. Government, ou=Environmental Protection Agency, cn=THOMAS RUCKI, 0.9.2342.19200300.100.1.1=68001003655804
Date: 2022.11.30 09:41:10 -05'00'

Thomas Rucki
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

khalsa.dharma@epa.gov
pittman.lawrence@epa.gov

Copy via Email to Respondent:

jed@allawgp.com
dena.taylor@kaneka.com

Copy via Email to Regional Hearing Clerk:

vaughn.lorena@epa.gov

11/30/2022

Signed
Office of Regional Counsel
U.S. EPA, Region 6