

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

REGIONAL HEARING
CLERK
2016 SEP 29 PM 12:30
U.S. Environmental
Protection Agency-Reg 2

In the matter of:

Mexichem Specialty Resins, Inc.
Pedricktown, New Jersey

Respondent

In a proceeding under Section 113(d)
of the Clean Air Act, 42 U.S.C. § 7413(d)

**CONSENT AGREEMENT
AND
FINAL ORDER**

CAA-02-2016-1208

PRELIMINARY STATEMENT

This Consent Agreement and Final Order (CAFO) simultaneously commences and concludes an administrative penalty proceeding brought by the Complainant, the Director of the Division of Enforcement and Compliance Assistance for the U.S. Environmental Protection Agency (EPA) Region 2, against Mexichem Specialty Resins, Inc. (Mexichem or Respondent), pursuant to Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and Rules 22.13(b) and 22.18(b) of EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (the Consolidated Rules), 40 C.F.R. Part 22.

This Consent Agreement is signed by the Complainant and Respondent, and the Final Order is issued by the Region 2 Regional Administrator. As set forth in the "Jurisdictional Allegations" section of the Consent Agreement, the Complainant is duly authorized to sign consent agreements and the Regional Administrator is duly authorized to issue final orders.

CONSENT AGREEMENT

General Provisions

1. EPA has determined that Mexichem violated the CAA and its implementing regulations at its facility (the Facility) located at Route 130 & Porcupine Road in Pedricktown, New Jersey. Specifically, EPA has determined that Mexichem violated the “National Emission Standard for Vinyl Chloride,” 40 C.F.R. Part 61, Subpart F (Vinyl Chloride NESHAP), and the “National Emission Standard for Equipment Leaks (Fugitive Emission Sources),” 40 C.F.R., Part 61, Subpart V (Fugitive Emission NESHAP), each of which were promulgated by EPA pursuant to Sections 112 and 114 of the CAA, as well as provisions of the Facility’s Title V operating permit issued pursuant to Title V of the Act and N.J.A.C. 7:27-22. The specific violations found by EPA are set forth below in the section of this Consent Agreement entitled “Conclusions of Law.”
2. Complainant and Respondent enter into this Consent Agreement and propose the attached Final Order so as to resolve the violations alleged in the “Conclusions of Law” section of this Consent Agreement. Pursuant to the Consolidated Rules 22.13(b) and 22.18(b), the issuance of the Consent Agreement and Final Order serves to simultaneously commence and conclude the agency’s administrative penalty proceeding for those violations.
3. For the purposes of this proceeding, and to avoid the expense of litigation, Respondent:
 - a. admits the jurisdictional allegations set forth below in the section of this Consent Agreement entitled “Jurisdictional Allegations;”
 - b. neither admits nor denies the findings of fact set forth in the section of this Consent Agreement entitled “Findings of Fact,”
 - c. consents to the payment of the civil penalty specified in the section of this Consent Agreement entitled “Settlement,” on the terms specified in that section;
 - d. consents to the issuance of the attached Final Order; and

- e. waives any right to contest the allegations set forth in the “Conclusions of Law” section of this Consent Agreement and any right to appeal the attached Final Order.

Jurisdictional Allegations

4. Section 113(d) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Sections 112 and 114 of the Act.
5. Section 302(e) of the CAA provides that whenever the term “person” is used in the Act, the term includes an 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.
6. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to the Complainant, the Director of the Division of Enforcement and Compliance Assistance, through the Region 2 Regional Administrator, the authority to (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.
7. Pursuant to EPA Delegation of Authority 7-6-C, the Administrator has delegated to the Region 2 Regional Administrator the authority to execute CAA Section 113(d) Final Orders.

8. Pursuant to Section 113(d), the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty proceeding. Specifically, on August 15, 2016, the United States Department of Justice (DOJ) granted EPA's request for a waiver of the CAA Section 113(d) 12-month time limitation on EPA's authority to initiate an administrative penalty action in this matter.
9. Respondent is a "person" within the meaning of Section 302(e) of the Act.
10. Respondent is an "owner or operator" of the Facility, as that term is used in CAA Section 112(a)(9) and 40 C.F.R. § 61.02.
11. The Facility is a "stationary source," as that term is used Section 112(a)(3) of the Act and 40 C.F.R. § 61.02.
12. The Facility is subject to a Title V operating permit that was issued to Mexichem pursuant to Title V of the Act and N.J.A.C. 7:27-22, the EPA-approved Title V operating permit program for the State of New Jersey.

Legal Background

CAA Sections 112 and 114

13. Section 112 of the Act requires the EPA Administrator to: (i) publish a list of hazardous air pollutants (HAPs), (ii) publish a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each such category and subcategory.
14. Emissions standards promulgated pursuant to Section 112 are commonly known as National Emission Standards for Hazardous Air Pollutants (NESHAPs). NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61.

15. Section 112(a) of the Act contains definitions relevant to Section 112. Specifically:
 - a. Section 112(a)(3) of the Act defines “stationary source” as any building, structure, facility or installation which emits or may emit any air pollutant.
 - b. Section 112(a)(9) defines “owner or operator” as any person who owns, leases, operates, controls or supervises a stationary source.
16. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.
17. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Section 112 of the Act.
18. Pursuant to Section 112 of the Act, EPA promulgated the Vinyl Chloride NESHAP, 40 C.F.R. § 61.60 *et seq.*
19. 40 C.F.R. § 61.60(a)(3) provides that the Vinyl Chloride NESHAP applies to plants which produce one or more polymers containing any fraction of polymerized vinyl chloride.
20. Pursuant to the Definitions of 40 C.F.R. § 61.61 at (b), “Vinyl chloride plant” includes any plant which produces vinyl chloride by any process, and at (w), “Leak” means any of several events that indicate interruption of confinement of vinyl chloride within process equipment. Leaks include events regulated under Subpart V of 40 C.F.R. Part 61 such as:
 - (1) an instrument reading of 10,000 ppm or more measured according to Method 21, among other things.

21. 40 C.F.R. § 61.65(b)(8)(ii) provides that for each process unit subject to the Vinyl Chloride NESHAP, a formal leak detection and repair (LDAR) program shall be implemented consistent with the requirements of the Fugitive Emission NESHAP at 40 C.F.R. Part 61, Subpart V.
22. Pursuant to Section 112 of the Act, EPA promulgated the Fugitive Emission NESHAP, 40 C.F.R. § 61.240 *et seq.*
23. Pursuant to 40 C.F.R. § 61.240(a), the provisions of the Fugitive Emission NESHAP apply to each of the following sources that are intended to operate in volatile hazardous air pollutant (“VHAP”) service: pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, and control devices or systems required by the Fugitive Emission NESHAP.
24. 40 C.F.R. § 61.245(b)(1) provides that monitoring shall comply with Method 21 of Appendix A of 40 C.F.R. Part 60 (Method 21).
25. 40 C.F.R. § 61.245(b)(2) provides that the detection instrument shall meet the performance criteria of Method 21.
26. Method 21 Section 8.1.2 of 40 C.F.R. Part 60, Appendix A - *Calibration Precision* requires the following: “The calibration precision test must be completed prior to placing the analyzer into service and at subsequent 3-month intervals or at the next use, whichever is later.
 - a. Make a total of three measurements by alternately using zero gas and the specified calibration gas. Record the meter readings. Calculate the average algebraic difference between the meter readings and the known value. Divide this average difference by the known calibration value and multiply by 100 to express the resulting calibration precision as a percentage.

- b. The calibration precision shall be equal to or less than 10 percent of the calibration gas value.”
- 27. Method 21 Section 8.1.3 of 40 C.F.R. Part 60, Appendix A - *Response Time* requires the following: “The response time test is required before placing the instrument into service. If a modification to the sample pumping system or flow configuration is made that would change the response time, a new test is required before further use.
 - a. Introduce zero gas into the instrument sample probe. When the meter reading has stabilized, switch quickly to the specified calibration gas. After switching, measure the time required to attain 90 percent of the final stable reading. Perform this test sequence three times and record the results. Calculate the average response time.
 - b. The instrument response time shall be equal to or less than 30 seconds. The instrument pump, dilution probe (if any), sample probe, and probe filter that will be used during testing shall all be in place during the response time determination.”
- 28. 40 C.F.R. § 61.245(b)(3) provides that the instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21. 40 C.F.R. § 61.245(b)(4) provides that calibration gases shall be:
 - a. Zero air (less than 10 ppm of hydrocarbon in air); and
 - b. A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.
- 29. Method 21 Section 7.1 of 40 C.F.R. Part 60, Appendix A provides the following: “Two gas mixtures are required for instrument calibration and performance evaluation:
 - a. Zero Gas. Air, less than 10 parts per million by volume (“ppmv”) VOC.
 - b. Calibration Gas. For each organic species that is to be measured during individual source surveys, obtain or prepare a known standard in air at a concentration approximately equal to the applicable leak definition specified in the regulation.”
- 30. Pursuant to Section 112 of the Act, EPA promulgated the “National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production,” 40 C.F.R. Part 63, Subpart HHHHHHHH, § 63.11860 *et seq.* (PVC MACT).

31. 40 C.F.R. § 63.11871 provides that after the applicable compliance date specified in 40 C.F.R. § 63.11875(a), (b) or (c), an affected source that is also subject to the provisions of 40 C.F.R. Part 61, Subpart F, is required to comply with the provisions of the PVC MACT and no longer has to comply with 40 C.F.R. Part 61, Subpart F.
32. 40 C.F.R. § 63.11915(a) requires that facilities subject to the new PVC MACT must comply with certain equipment leaks requirements cited in 40 C. F. R. Part 63, Subpart UU, which references Method 21 at 40 C.F.R. § 63.1023(b)(1).

Findings of Fact

33. Respondent is the owner and operator of the Facility.
34. Mexichem's Facility, located at Route 130 & Porcupine Road, Pedricktown, New Jersey, uses vinyl chloride monomer to produce suspension PVC resin that meets the applicability of the Vinyl Chloride NESHAP. The Facility operates under an approved Title V operating permit issued by the New Jersey Department of Environmental Protection: BOP140001 with an expiration date of February 28, 2019.
35. On April 8, 2014, EPA Region 2 conducted an inspection at this Facility to determine compliance with all applicable fugitive leak detection requirements codified at 40 C.F.R. Part 61, Subpart V, and listed in the Facility's Title V operating permit at reference #25 on Page 21.
36. During the April 8, 2014 EPA inspection, EPA observed that Mexichem uses a portable leak monitoring detector identified as iBrid MX6 Multigas Monitor.
37. During the April 8, 2014 EPA inspection, EPA observed that the Mexichem technician did not use a zero air gas cylinder while performing the calibration of the iBrid MX6 Multigas Monitor.

38. During the April 8, 2014 EPA inspection, Mexichem indicated that the Mexichem technician did not perform calibration precision testing prior to using its iBrid MX6 Multigas Monitor.
39. During the April 8, 2014 EPA inspection, Mexichem indicated that the Mexichem technician did not perform calibration response time testing on the iBrid MX6 Multigas Monitor.
40. The new PVC MACT became effective on April 17, 2015, replacing 40 C.F.R. Part 61, Subpart F with 40 C.F.R. Part 63, Subpart HHHHHHHH, and the Fugitive Emission NESHAP, 40 C.F.R. Part 61, Subpart V, is replaced with 40 C.F.R. Part 63, Subpart UU. The applicability and requirements of Method 21 remain the same.

Conclusions of Law

Based on the Findings of Fact set forth above, EPA reaches the following Conclusions of Law:

41. The Respondent is a “person,” within the meaning of Section 302(e) of the Act.
42. At the time of the violations alleged in this Consent Agreement, Respondent was subject to the Vinyl Chloride NESHAP, 40 C.F.R. Part 61, Subpart F.
43. At the time of the violations alleged in this Consent Agreement, Respondent was subject to the Fugitive Emission NESHAP, 40 C.F.R., Part 61, Subpart V.
44. Respondent violated 40 C.F.R. § 61.245(b)(2) and EPA Method 21 by failing to perform a quarterly calibration precision test prior to using the portable leak monitoring detector iBrid MX6 Multigas Monitor.
45. Respondent violated 40 C.F.R. § 61.245(b)(2) and EPA Method 21 by failing to perform a calibration response time test on the portable leak monitoring detector iBrid MX6 Multigas Monitor.

46. Respondent violated 40 C.F.R. § 61.245(b)(4) and EPA Method 21 by failing to perform a calibration with zero air prior to using the portable leak monitoring detector iBrid MX6 Multigas Monitor.

Settlement

47. Pursuant to Section 113(d) of the Act, Respondent shall pay a civil penalty of **\$45,000**. Respondent shall pay the entire \$45,000 within thirty (30) days from the date of issuance of the attached Final Order (Due Date), using any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and identifying each and every payment with “Docket No. CAA-02-2016-1208.” Within 24 hours of payment of the civil penalty, Respondent shall send proof of payment to the following:

Robert Buettner, Chief, Air Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2
290 Broadway – 21st Floor
New York, New York 10007

and

Liliana Villatora, Chief, Air Branch
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer in the amount due, and identified with “Docket No. CAA-02-2016-1208,” and any other information required to demonstrate that payment has been made according to the applicable payment method.

48. If Respondent fails to make full and complete payment of the \$45,000 penalty that is required by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:
- a. Interest. If Respondent fails to make payment, or to make partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.
 - b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
 - c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.
49. Upon entering into this CAFO, Mexichem shall be released of all liability to EPA for the violations alleged herein, relating to the April 8, 2014 EPA inspection. Nothing in this CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation(s) of this CAFO or for Respondent's violation(s) of any other applicable provision of law or regulation, nor shall it be construed as limiting the defenses that Respondent may raise to any such alleged violation(s).
50. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Respondent's alleged violations of the Act identified herein.

51. Nothing in this Consent Agreement and attached Final Order shall relieve Respondent of the duty to comply with all applicable provisions of the Clean Air Act and other environmental laws and it is the responsibility of the Respondent to comply with such laws and regulations.
52. This Consent Agreement, attached Final Order, and any provision herein is not intended to be an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this CAFO or any of its terms and conditions.
53. Respondent explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement and explicitly waives its right to appeal the attached Final Order.
54. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.
55. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in this action resolved by this Consent Agreement and attached Final Order, except as explicitly provided in Paragraph 48.c. of this CAFO.
56. The Consent Agreement and attached Final Order shall be binding on Respondent and its successors and assignees.
57. Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

Signatures

For Complainant:

for Dore LaPosta - Bojursky
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2

Sept. 23, , 2016


For Respondent:

C. M. Stolfo - MANUFACTURING DIRECTOR Sept. 21st, 2016
Carl Stolfo
Manufacturing Director
Mexichem Specialty Resins, Inc.
Route 130 & Porcupine Road
P.O. Box 420
Pedricktown, New Jersey 08067

*In the Matter of Mexichem Specialty Resins, Inc.
CAA-02-2016-1208*

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement, *In the Matter of Mexichem Specialty Resins, Inc.*, CAA-02-2016-1208. This Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.



Judith A. Enck
Regional Administrator
United States Environmental Protection Agency, Region 2


Date: 9/27/16

Signatures

For Complainant:

_____, 2016
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2

For Respondent:

 MANUFACTURING DIRECTOR Sept. 21st, 2016
Carl Stolfo
Manufacturing Director
Mexichem Specialty Resins, Inc.
Route 130 & Porcupine Road
P.O. Box 420
Pedricktown, New Jersey 08067

In the Matter of Mexichem Specialty Resins, Inc.
CAA-02-2016-1208

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement, *In the Matter of Mexichem Specialty Resins, Inc.*, CAA-02-2016-1208. This Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.

Judith A. Enck
Regional Administrator
United States Environmental Protection Agency, Region 2

Date: _____

CERTIFICATE OF SERVICE

I certify that on September 29, 2016, I caused the fully executed Consent Agreement and Final Order in the matter of Mexichem Specialty Resins, Inc., reference CAA-02-2016-1208, to be served on the following persons in the manner listed below:

One Original and One Copy by hand delivery to:

✓ Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

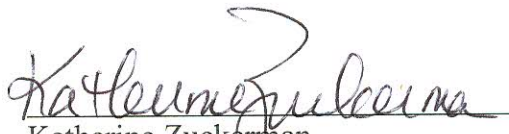
One Copy by Hand delivery to:

Erick Ihlenburg
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2, Air Branch
290 Broadway, 16th Floor
New York, New York 10007-1866

One copy by Certified Overnight Delivery to:

Carl Stolofo
Manufacturing Director
Mexichem Specialty Resins, Inc.
Route 130 & Porcupine Road
P.O. Box 420
Pedricktown, New Jersey 08067

Dated: September 29, 2016


Katherine Zuckerman
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 2