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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

HEXION INC.,

Springfield, Oregon,

Respondent.

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DOCKET NO. EPCRA-10-2019-0104

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045.

1.2. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Hexion Inc. ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 ("Complainant") has been delegated the authority pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of EPCRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of EPCRA together with the specific provisions of EPCRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Under Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. §§ 372.22 and 372.30, the owner or operator of a facility covered by Section 313 must submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form ("Form R") for each toxic chemical referenced in Section 313(c) of EPCRA and listed in 40 C.F.R. § 372.65 that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical threshold specified in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, and 372.28.

3.2. Under 40 C.F.R. § 372.22, a facility that meets each of the following criteria in a calendar year is a covered facility for that calendar year and must report under 40 C.F.R. § 372.30 by July 1 of the following year:

3.2.1. The facility has 10 or more full-time employees;

3.2.2. The facility is in a Standard Industrial Classification (“SIC”) major group or industry code or North American Industrial Classification System (“NAICS”) code listed in 40 C.F.R. §§ 372.22(b) and 372.23; and

3.2.3. The facility manufactured, imported, processed, or otherwise used toxic chemicals in excess of an applicable threshold quantity of those chemicals set forth in 40 C.F.R. §§ 372.25, 372.27, or 372.28.

3.3. The toxic chemicals which are subject to the reporting requirement of 40 C.F.R. § 372.30 are listed in 40 C.F.R. § 372.65.

3.4. Phenol, methanol, and formaldehyde are toxic chemicals listed in 40 C.F.R. § 372.65. Under 40 C.F.R. § 372.25, the reporting threshold quantity for the manufacture or processing of the toxic chemicals phenol, methanol, and formaldehyde, is 25,000 pounds in one calendar year.

3.5. A facility subject to the Toxic Chemical Release Inventory Reporting Form (Form R) reporting requirements of EPCRA § 313 is required to report for each toxic chemical the general type of waste stream containing the reported chemical, the treatment method(s) applied to the waste stream, and an estimate of the efficiency of the treatment, as applicable in Section 7 of the Form R, as required by 40 C.F.R. § 372.85(b)(16).

3.6. Under the Pollution Prevention Act of 1990 (PPA), Section 6607, 42 U.S.C. § 13106, a facility subject to the Form R reporting requirements of EPCRA § 313 is required to report, *inter alia*, the quantity of a toxic chemical entering any waste stream (or otherwise released into the environment) prior to recycling, treatment, or disposal during the calendar year;

the amount of the chemical from the facility which is recycled (at the facility or elsewhere) during the calendar year and the recycling process used; and the amount of the chemical from the facility which is treated (at the facility or elsewhere) during the calendar year, as applicable in Section 8 of the Form R.

3.7. Respondent is the owner and operator of a facility located at 470 South Second Street, Springfield, Oregon ("the Facility").

3.8.. During calendar years 2013, 2014, 2015, 2016, and 2017 the Facility had 10 or more full-time employees.

3.9. The Facility is included in NAICS code 325211, which is included in the list of covered industry codes in 40 C.F.R. § 372.23.

3.10. During calendar year 2017, Respondent processed methanol in excess of the threshold quantity set forth in 40 C.F.R. § 372.25.

3.11. Respondent timely submitted a Form R for methanol to EPA for calendar year 2017, as required by 40 C.F.R. § 372.30.

3.12. Respondent's Form R for methanol for calendar year 2017 failed to report the on-site treatment by a scrubber and efficiency in a gaseous waste stream in Section 7A, the on-site energy recovery by an industrial boiler in Section 7B, the on-site recycling in Section 7C, the quantity used for energy recovery on-site in Section 8.2, and the on-site recycling quantity in Section 8.4.

3.13. Respondent therefore violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a); 40 C.F.R. § 372.30; and Section 6607 of the PPA, 42 U.S.C. § 13106, by failing to submit an accurate Form R for methanol for calendar year 2017.

3.14. During calendar year 2017, Respondent manufactured and processed formaldehyde in excess of the threshold quantity set forth in 40 C.F.R. § 372.25.

3.15. Respondent timely submitted a Form R for formaldehyde to EPA for calendar year 2017, as required by 40 C.F.R. § 372.30.

3.16. Respondent's Form R for formaldehyde for calendar year 2017 failed to report the on-site treatment by a scrubber and efficiency in a gaseous waste stream in Section 7A, the on-site energy recovery by an industrial boiler in Section 7B, and the quantity used for energy recovery on-site in Section 8.2.

3.17. Respondent therefore violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a); 40 C.F.R. § 372.30; and Section 6607 of the PPA, 42 U.S.C. § 13106, by failing to submit an accurate Form R for formaldehyde for calendar year 2017.

3.18. During calendar years 2013, 2014, 2015, and 2016, Respondent processed phenol in excess of the threshold quantity set forth in 40 C.F.R. § 372.25.

3.19. Respondent timely submitted a Form R for phenol to EPA for calendar years 2013, 2014, 2015, and 2016, as required by 40 C.F.R. § 372.30.

3.20. Respondent's Form R for phenol for calendar years 2013, 2014, 2015, and 2016 failed to report the on-site treatment by a scrubber and efficiency in a gaseous waste stream in Section 7A, and the quantity treated on-site in Section 8.6.

3.21. Respondent therefore violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a); 40 C.F.R. § 372.30; and Section 6607 of the PPA, 42 U.S.C. § 13106, by failing to submit an accurate Form R for phenol for these years.

3.22. During calendar years 2013, 2014, 2015, and 2016, Respondent processed methanol in excess of the threshold quantity set forth in 40 C.F.R. § 372.25.

3.23. Respondent timely submitted a Form R for methanol to EPA for calendar years 2013, 2014, 2015, and 2016, as required by 40 C.F.R. § 372.30.

3.24. Respondent's Form R for methanol for calendar years 2013, 2014, 2015, and 2016 failed to state the on-site treatment by a scrubber and efficiency in a gaseous waste stream in Section 7A, the on-site energy recovery by an industrial boiler in Section 7B, the on-site recycling in Section 7C, the quantity used for energy recovery on-site in Section 8.2, the quantity recycled on-site in Section 8.4, and the quantity treated on-site in Section 8.6.

3.25. Respondent therefore violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a); 40 C.F.R. § 372.30; and Section 6607 of the PPA, 42 U.S.C. § 13106, by failing to submit an accurate Form R for methanol for these years.

3.26. During calendar years 2013, 2014, 2015, and 2016, Respondent manufactured and processed formaldehyde in excess of the threshold quantity set forth in 40 C.F.R. § 372.25.

3.27. Respondent timely submitted a Form R for formaldehyde to EPA for calendar years 2013, 2014, 2015, and 2016, as required by 40 C.F.R. § 372.30.

3.28. Respondent's Form R for formaldehyde for calendar years 2013, 2014, 2015, and 2016 failed to state the on-site treatment by a scrubber and efficiency in a gaseous waste stream in Section 7A, the on-site energy recovery by an industrial boiler in Section 7B, the quantity used for energy recovery on-site in Section 8.2, and the quantity treated on-site in Section 8.6.

3.29. Respondent therefore violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a); 40 C.F.R. § 372.30; and Section 6607 of the PPA, 42 U.S.C. § 13106, by failing to submit an accurate Form R for formaldehyde for these years.

ENFORCEMENT AUTHORITY

3.30. Under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$57,317 for each such violation. In accordance with Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), each day a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, continues constitutes a separate violation.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. EPA has determined that an appropriate penalty to settle this action is \$60,000 (the "Assessed Penalty") and Respondent consents to the assessment of the Assessed Penalty.

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

Meghan Dunn
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
dunn.meghan@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 325(f)(1) of EPCRA, 42 U.S.C. § 11045(f)(1), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

4.8.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of not more than 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraphs 4.8 and 4.26, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

4.10. Respondent agrees to implement and complete a Supplemental Environmental Project (SEP) in accordance with all provisions described in this Consent Agreement. The SEP involves the addition of a chiller to the phenol formaldehyde resin ("PF Resin") seal water tank in the Facility's phenol-formaldehyde resin production processes. The chiller will cool the seal water to a lower temperature than is currently possible with the Facility's existing chiller, thereby reducing emissions from the scrubber. The primary purpose of the SEP is to reduce emissions of volatile organic compounds (VOCs), including methanol, formaldehyde, and phenol, which are hazardous air pollutants (HAPs) as well as listed toxic chemicals under 40 C.F.R. § 372.65.

4.11. Respondent agrees to purchase and install one 60-ton seal water chiller ("Chiller") at the Facility, which, operating in addition to the existing chiller at the Facility, is intended to

enable the Facility to cool the water in the PF Resin seal water tank to a temperature of 10 degrees Celsius.

4.12. Respondent agrees to install and begin operating the SEP within 95 calendar days of the effective date of this Consent Agreement (“Effective Date”), in accordance with all provisions described in this Consent Agreement, provided that, if Respondent orders the Chiller from the Chiller vendor within five (5) business days of Respondent receiving notice of the Effective Date (“Order Date”) and the Chiller is not delivered to Respondent within sixty one (61) days of the Order Date (“Delivery Date”) despite Respondent’s commercially reasonable efforts to ensure delivery by the Delivery Date, the deadline for installing and beginning to operate the SEP pursuant to this paragraph will be extended by the number of days the Chiller is delivered after the Delivery Date.

4.13. Respondent further agrees to operate the SEP at the Facility for a minimum of two years (730 calendar days) upon completion of SEP installation.

4.14. Respondent certifies to the truth, accuracy, and completeness of all cost information provided to EPA in connection with EPA’s approval of the SEP, and that Respondent in good faith estimates that the cost to implement SEP, exclusive of internal labor costs, is \$134,908.

4.15. Respondent also certifies that, as of the date of this Consent Agreement:

a. Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation;

b. Respondent is not required to perform or develop the SEP by another agreement, under a grant, or as injunctive relief in any other case;

c. Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP;

d. The SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement;

e. Respondent will not receive any reimbursement for any portion of the SEP from any other person or entity; and

f. The activities and services funded by the SEP will not be conducted on or provide benefit to federally-owned property.

4.16. For federal income tax purposes, Respondent agrees that it will neither capitalize in inventory or basis nor deduct the first \$134,908 of costs or expenditures incurred in performing the SEP.

4.17. Respondent hereby 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.

4.18. Respondent is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Consent Agreement. Respondent may use contractors, consultants, or others in planning and implementing the SEP.

4.19. Respondent shall submit a SEP Completion Report ("Completion Report 1") to EPA 60 days after the date on which Respondent installs and begins operating the SEP as described in paragraph 4.12. Completion Report 1 shall contain the following information:

- 1) A detailed description of the SEP as implemented;
- 2) Certification that the chiller has been installed and chiller operation has been initiated pursuant to the provisions of this Consent Agreement;

- 3) Documentation providing evidence of chiller installation and completion of work associated with such installation (including but not limited to photos, vendor invoices or receipts, correspondence) and documentation of all SEP expenditures; and
- 4) A description of any problems encountered during installation or initial operation and solutions devised to solve these problems.

4.20. Respondent shall submit a second report ("Completion Report 2") to EPA within 30 days after operating the SEP for two years (730 calendar days). Completion Report 2 shall contain the following information:

- 1) A description of any problems encountered during the preceding 730 days of SEP implementation (not including those described in Completion Report 1) and the solutions thereto;
- 2) A description of any changes or repairs that have been made to the chiller and associated equipment that differ from the design as proposed to EPA;
- 3) A description of the environmental and public health benefits resulting from implementation of the SEP;
- 4) The number of hours the Chiller was operated during the preceding 730 days and the temperature at which it was operated during these hours; and
- 5) Data regarding emissions reductions, whether collected through emission testing, mass balance calculations, predictive emission modeling used for air permit compliance, or other demonstration of the quantitative effectiveness of the SEP, showing reductions in emissions of VOCs—including the HAPs methanol, formaldehyde, and phenol—that were achieved by use of the additional chiller.

4.21. Unless otherwise instructed in writing by EPA, Respondent shall submit all notices and reports related to the SEP as required by this Consent Agreement by first class mail, overnight mail, or hand delivery to:

Meghan Dunn
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101

4.22. Respondent agrees that EPA may inspect Respondent's records related to the SEP at any reasonable time to confirm that the SEP is being undertaken in conformity with the representations made herein.

4.23. Respondent shall maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this Consent Agreement until Completion Reports 1 and 2 are accepted pursuant to Paragraph 4.24, and Respondent shall provide the documentation of any such underlying data to EPA within 15 days of a written request for such information. In all documents or reports including, without limitation, Completion Reports 1 and 2 submitted to EPA pursuant to this Consent Agreement, Respondent shall, by a corporate officer, sign and certify under penalty of law that the information contained in such a document or report is true, accurate, and not misleading by signing the following statement:

"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."

4.24. Following receipt of Completion Report 1, described in Paragraph 4.19, and Completion Report 2, described in Paragraph 4.20, EPA will do one of the following: (i) accept the Report; (ii) reject the Report, notify Respondent, in writing, of deficiencies in the Report, and provide Respondent an additional 30 days in which to correct any deficiencies; or (iii) reject the Report and seek stipulated penalties in accordance with Paragraphs 4.26 and 4.27.

4.25. If Respondent fails to satisfactorily complete the SEP as contemplated by this Consent Agreement, then stipulated penalties shall be due and payable by Respondent to EPA upon demand in accordance with Paragraphs 4.26 and 4.27. EPA may, in the unreviewable

exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP is reserved to the sole discretion of EPA.

4.26. If Respondent fails to satisfactorily complete the SEP as required by this Consent Agreement, Respondent shall pay stipulated penalties, upon written demand from EPA, in the following amount for each day the SEP remains incomplete:

Period of Noncompliance	Penalty Per Violation Per Day
1 st through 7 th day	\$100
8 th through 21 st day	\$200
22 nd through 30 th day	\$300
Greater than 30 days	\$500

4.27. Respondent shall pay stipulated penalties within 15 days of receipt of a written demand by EPA for such penalties. Payment shall be in accordance with the provisions of Paragraphs 4.5 and 4.6. Interest and late charges shall be paid as stated in Paragraph 4.8.

4.28. Any public statement, oral or written, in print, film, or other media, made by or at the direction of Respondent, which makes reference to the SEP from the date of the execution of this Consent Agreement shall include the following language:

“This project was undertaken in connection with the settlement of an administrative enforcement action taken by the U.S. Environmental Protection Agency under the Emergency Planning and Community Right-to-Know Act.”

4.29. This Consent Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be

construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with either SEP undertaken pursuant to this Consent Agreement.

ADDITIONAL PROVISIONS

4.30. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.31. Except as described in Paragraph 4.8 and 4.27, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.32. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.33. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

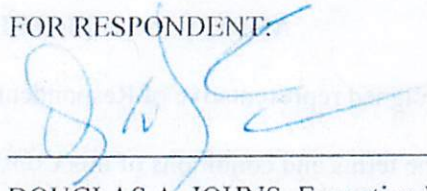
4.34. Respondent consents to the conditions specified in this consent agreement.

4.35. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

August 8 2019

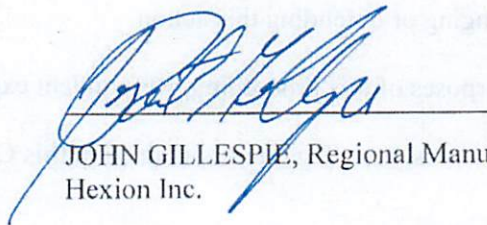
FOR RESPONDENT:



DOUGLAS A. JOHNS, Executive Vice President and
General Counsel
Hexion Inc.

DATED:

8/8/19

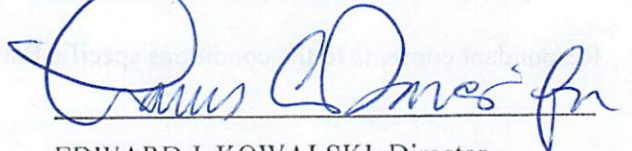


JOHN GILLESPIE, Regional Manufacturing Director
Hexion Inc.

DATED:

8-30-19

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. EPCRA-10-2019-0104
HEXION INC.,)	
)	FINAL ORDER
Springfield, Oregon,)	
)	
Respondent.)	


1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under EPCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall 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 does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of EPCRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 3rd day of September, 2019.


RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Hexion Inc., Docket No.: EPCRA-10-2019-0104**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:


The undersigned certifies that a true and correct copy of the document was delivered to:

Danielle McInhardt
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Douglas A. Johns
Executive Vice President and General Counsel
Hexion, Inc.
180 East Broad Street
Columbus, Ohio 43215

DATED this 4 day of September 2019.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10