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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:)

OCCIDENTAL CHEMICAL)
CORPORATION)

CONVENT, LOUISIANA)

RESPONDENT)
)

DOCKET NO. CAA-06-2021-3338

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and Occidental Chemical Corporation (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

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

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

3. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth herein, and waives all defenses which have been raised

or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall only resolve the Respondent's liability for federal civil penalties for those violations and facts which are set forth herein.

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

6. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement, to execute it, and to legally bind that party to it.

7. This CAFO shall apply to and be binding upon the Respondent, its officers, directors, servants, employees, agents, authorized representatives, successors, and assigns.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

8. Occidental Chemical Corporation (Respondent) is a corporation authorized to do business in the State of Louisiana.

9. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as "an individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency of the United States and any officer, agent, or employee thereof."

10. The Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

11. The Respondent owns and operates a chemical manufacturing facility located at 7377 Highway 3214, Convent, Louisiana 70723.

12. "Stationary source" is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C.

§ 7412(r)(2)(C), and 40 C.F.R. § 68.3 as meaning:

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.

13. The Respondent's facility identified in Paragraph 11 is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

14. The Respondent is the owner and/or operator of the stationary source identified in Paragraph 11.

15. Chlorine is a "regulated substance", as set forth in 40 C.F.R. § 68.130.

16. "Process" is defined in 40 C.F.R. § 68.3 as meaning:

any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of activities. For the purpose 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.

17. The Respondent has a chlorine process at the stationary source identified in Paragraph 11.

18. "Covered process" is defined in 40 C.F.R. § 68.3 as meaning "a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115."

19. 40 C.F.R. § 68.130 specifies a 2,500-pound threshold quantity for chlorine.

20. The chlorine process identified in Paragraph 17 contains chlorine in excess of the applicable threshold quantity.

21. The chlorine process identified in Paragraph 17 is a "covered process" as that term

is defined by 40 C.F.R. § 68.3.

22. The chlorine covered process identified in Paragraphs 17 and 21 is subject to the “Program 3” requirements of the Risk Management Plan (RMP) regulations and must, among other things, to comply with the Program 3 Prevention Program of 40 C.F.R. Part 68, Subpart D.

23. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), authorizes EPA to bring an administrative action for penalties where the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

24. EPA and the U.S. Department of Justice have jointly determined that the Complainant can administratively assess a civil penalty even though the alleged violations have occurred more than twelve (12) months prior to the initiation of the administrative action.

25. On or about August 13 - 15, 2018, representatives of EPA conducted an inspection of the Respondent’s facility.

B. VIOLATIONS

Count One – Inadequate Process Hazard Analysis

26. 40 C.F.R. § 68.67(a) and (f) provides the following:

(a) The owner or operator shall perform an initial process hazard analysis (hazard evaluation) on processes covered by 40 C.F.R. Part 68. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process.

(f) At least every five (5) years after completion of the initial process hazard analysis, the process hazard analysis must be updated and revalidated by a team meeting the requirements of 40 C.F.R. § 68.67(d).

27. On or about April 8, 2018, the Complainant requested that the Respondent submit a complete copy of its latest process hazard analysis (PHA) for the chlorine process.

28. On or about April 24, 2018, the Respondent submitted two PHAs to EPA for the chlorine process.

29. The PHAs provided by Respondent did not address the hazards associated with natural disasters such as flooding and hurricanes.

30. Therefore, the Respondent violated 40 C.F.R. § 68.67 by failing to address all hazards associated with the chlorine process.

Count Two – Inadequate Operating Procedures

31. 40 C.F.R. § 68.69(a) provides that 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 process safety information and shall address at least the following elements:

(1). **Steps** for each operating phase:

- i. Initial startup;
- ii. Normal operations;
- iii. Temporary operations;
- iv. Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a timely manner;
- v. Emergency operations;
- vi. Normal shutdown; and,
- vii. Startup following a turnaround, or after an emergency shutdown.

* * * *

(3) Safety systems and their function.

- (i) Properties of, and hazards presented by, the chemicals used in the process; and,
- (ii) Precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment (PPE).

32. The Respondent has implemented standard operating procedures (SOPs) for the chlorine process.

33. Ten of the SOPs utilized in the chlorine process directed operators to a personal protective equipment hazard assessment document which summarized PPE requirements, but the specific SOPs were not summarized in the hazard assessment document.

34. The SOPs referenced in paragraph 33 did not address the appropriate PPE to be worn while performing the corresponding SOP.

35. Therefore, the Respondent violated 40 C.F.R. § 68.69(a)(3)(ii) by failing to develop and implement certain SOPs that provide clear instructions that addressed the appropriate PPE to be used to prevent exposure.

Count Three – Failure to Timely Certify Operating Procedures

36. 40 C.F.R. § 68.69(c) provides that the operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

37. The 2015 certification for the operating procedure for the cell renewal area was required to be certified on or about April 30, 2015 but was not certified until June 25, 2015.

38. The 2016 certification for the operating procedures for plant 3 for the year 2016 was required to be certified on or about February 2, 2016 but was not certified until October 4, 2016.

39. Therefore, the Respondent violated 40 C.F.R. § 68.69(c) by failing to timely certify certain operating procedures.

Count Four – Failure to Have Authorized Inspector Evaluate and Accepts Results of

Mechanical Integrity Inspection

40. 40 C.F.R. § 68.73(a) provides that the requirements of 40 C.F.R. § 68.73(d) applies to the following process equipment:

- (1) Pressure vessels and storage tanks;
- (2) Piping systems (including piping components and valves);
- (3) Relief and vent systems and devices;
- (4) Emergency shutdown systems;
- (5) Controls (including monitoring devices and sensors, alarms, and interlocks); and,
- (6) Pumps.

41. 40 C.F.R. § 68.73(b) provides that the owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment.

42. 40 C.F.R. § 68.73(d) provides the following:

- (1) Inspections and tests shall be performed on process equipment.
- (2) Inspection and testing procedures shall follow recognized and generally acceptable good engineering practices.
- (3) The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.
- (4) The owner or operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

43. On or about October 27, 2016, an API 570 external visual piping inspection was conducted on a chlorine piping circuit. Section 4.3.4 of API 570 requires that "when inspections, repairs, or alterations are being conducted on piping systems, an authorized piping inspector shall be responsible to the owner/user for determining that the requirements of API 570 on inspection, examination, quality assurance and testing are met. The inspector shall be directly involved in the inspection activities which in most cases will require field activities to ensure that procedures are followed. The inspector is also responsible for extending the scope of the

inspection (with appropriate consultation with engineers/specialists), where justified depending upon the findings of the inspection. Where nonconformances are discovered, the inspector is responsible for notifying the owner-user in a timely manner and making appropriate repair or other mitigative recommendations. The authorized piping inspector may be assisted in performing visual inspections by other properly trained and qualified individuals, who may or may not be certified piping inspectors (e.g. examiners and operating personnel). Personnel performing Nondestructive Examinations (NDE) shall meet the qualifications identified in 4.3.5, but need not be authorized piping inspectors. However, all examination results shall be evaluated and accepted by the authorized piping inspector.”

44. An “authorized piping inspector” is an “employee of an authorized inspection agency who is qualified and certified to perform the function specified in API 570.”

45. The Respondent failed to document that an authorized piping inspector evaluated and accepted the results of the inspection identified in Paragraph 43.

46. Therefore, the Respondent violated 40 C.F.R. § 68.73(d)(2) by failing to follow recognized and generally accepted good engineering practices by failing to have an authorized piping inspector evaluate and accept the results of the inspection identified in Paragraph 43.

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

47. For the reasons set forth above, the Respondent has agreed to pay a civil penalty of **ONE HUNDRED THOUSAND DOLLARS (\$100,000)**.

48. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier’s check, or wire transfer, made payable to “Treasurer, United States of America, EPA - Region 6”. Payment shall be remitted in one of

three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check should be remitted to:

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

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

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

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency" with a phone number of (412) 234-4381".

PLEASE NOTE: Docket Number CAA-06-2021-3338 shall be clearly typed on the check or other method of payment to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name,

and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Kayla Buchanan
Enforcement Officer
Chemical Accident Prevention Section (ECDAC)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

Lorena Vaughn
Regional Hearing Clerk (ORCD)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

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

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

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

51. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective

date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

52. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

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

54. This CAFO is considered a "prior violation" for the purpose of demonstrating a "history of noncompliance" under the Clean Air Act Stationary Source Penalty Policy, and the

Combined Enforcement Policy for Clean Air act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (June 2012).

B. COMPLIANCE

55. The Respondent hereby certifies that as of the date of the execution of this CAFO, that it has addressed the violations alleged herein, and is, to the best of its knowledge, in compliance with all applicable requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r) and 40 C.F.R. Part 68.

C. MODIFICATION

56. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and the Respondent, and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

D. RETENTION OF ENFORCEMENT RIGHTS

57. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of federal or state laws, regulations, or permitting conditions.

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

59. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility whether related to the violations addressed in this CAFO or otherwise. Furthermore, nothing in this CAFO shall be construed or to prevent or limit the United States' or EPA's civil and criminal authorities, or that

of other federal, state, or local agencies or departments to obtain penalties or injunctive relief under other federal, state, or local laws or regulations.

60. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. In any such action to enforce the provisions of this CAFO, the Respondent shall not assert, and may not maintain, any defense of laches, statute of limitations, or any other equitable defense based on the passage of time. This CAFO shall not be construed to limit the rights of the EPA or the United States to obtain penalties or injunctive relief under the Clean Air Act or its implementing regulations, or under other federal, state, or local laws or regulations, except as to the violations specifically resolved in this CAFO.

61. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, to enforce the provisions of this CAFO, or other appropriate relief relating to this Facility, the Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims for civil penalties that have been specifically resolved pursuant to this CAFO.

62. The Respondent waives any right it may possess at law or in equity to challenge the authority of the EPA or the United States to bring a civil action in a United States District Court to compel compliance with this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action. The Respondent also consents to personal jurisdiction in any action to enforce this CAFO in the appropriate Federal District

Court.

63. The Respondent also waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that the Respondent may have with respect to any issue of law or fact set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).

64. This CAFO is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. The Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondent's compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of the CAA or with any other provisions of federal, state, or local laws, regulations, or permits.

E. COSTS

65. Except as provided in Paragraph 53, each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

F. SERVICE OF CAFO

66. The Complainant and Respondent agree to the use of electronic signatures for this matter. The Respondent further agrees to electronic service of this CAFO pursuant to 40 C.F.R. § 22.6, by e-mail to the following address:

To the Respondent:

Scott A. Elliott

Baker Botts L.L.P.
910 Louisiana Street
Houston, TX 77002
scott.elliott@bakerbotts.com

Daniel Almaguer
Assistant General Counsel
Occidental Chemical Corporation
14555 Dallas Parkway, Suite 400
Dallas, TX 75254
Daniel_almaguer@oxy.com


G. EFFECTIVE DATE

67. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

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

FOR THE RESPONDENT:

Date: 4/30/21



John Brenon
Senior Vice-President Manufacturing
Occidental Chemical Corporation

FINAL ORDER

Pursuant to the Section 113 of the CAA, 42 U.S.C. § 7413, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive relief or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. 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. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Rucki,
Thomas

Digitally signed by Rucki, Thomas
DN: cn=Rucki, Thomas,
email=Rucki.Thomas@epa.gov
Date: 2021.05.19 13:44:57 -05'00'

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the _ day of _ , 2021, a true and correct copy of the foregoing Consent Agreement and Final Order (CAFO) was electronically delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy of the CAFO was sent to the following via e-mail:

Scott A. Elliott
Baker Botts L.L.P.
910 Louisiana Street
Houston, TX 77002
scott.elliott@bakerbotts.com

Daniel Almaguer
Assistant General Counsel
Occidental Chemical Corporation
14555 Dallas Parkway, Suite 400
Dallas, TX 75254
Daniel_almaguer@oxy.com

Lorena Vaughn
Regional Hearing Clerk
Region 6
U.S. Environmental Protection Agency
Vaughn.Lorena@epa.gov

JEFFREY
CLAY

Digitally signed by JEFFREY CLAY
DN: c=US, o=U.S. Government,
ou=Environmental Protection Agency,
cn=JEFFREY CLAY,
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Date: 2021.05.19 15:05:16 -0500'

U.S. EPA Region 6
Dallas, Texas