



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN - 7 2017

REPLY TO THE ATTENTION OF

ELECTRONIC SERVICE
VIA EMAIL

Mr. Bryan G. Selander
General Counsel
Viking Chemical Company
1827 Eighteenth Avenue
Rockford, Illinois 61110

Re: Viking Chemical Company
Consent Agreement and Final Order
Docket No. CAA-05-2017-0026

Dear Selander:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U. S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on June 7, 2017. Please pay the civil penalty in the amount of \$8,500 in the manner prescribed in paragraph(s) 36 through 38 and reference your check with the number BD N/A and the docket number. In addition, your client must complete a Supplemental Environmental Project worth at least \$25,500 as prescribed in paragraphs 43 through 45.

Please feel free to contact Silvia Palomo at (312) 353-2172 if you have any questions regarding the enclosed documents. Please direct any legal questions to Louise Gross, Associate Regional Counsel at (312) 886-6844. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief
Chemical Emergency
Preparedness and Prevention Section

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. CAA-05-2017-0026
)
Viking Chemical Company) Proceeding to Assess a Civil Penalty under
1827 Eighteenth Ave.) Section 113(d) of the Clean Air Act
Rockford, Illinois 61104) 42 U.S.C. § 7413(d)
)
Respondent.)



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22, for alleged violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the implementing regulations.
2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (EPA), Region 5, Chicago, Illinois.
3. Respondent is Viking Chemical Company, an Illinois corporation doing business in the State of Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be simultaneously commenced and concluded by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. In accordance with Section 112(r) of the Act, on June 20, 1996, EPA promulgated regulations to prevent accidental releases of regulated substances and minimize the consequences of those releases that do occur. These regulations, known as the Risk Management Program regulations, are codified at 40 C.F.R. Part 68.

10. The Risk Management Program regulations apply to all stationary sources with processes that contain more than a threshold quantity of a regulated substance. The List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention is codified at 40 C.F.R. § 68.130.

11. Chlorine is a “regulated substance,” as that term is defined in Section 112(r)(3) of the Act and 40 C.F.R. § 68.3. *See* 40 C.F.R. § 68.130, Table 1.

12. The “threshold quantity” (as that term is defined in 40 C.F.R. § 68.3) for chlorine is 2,500 pounds in a process. *See* 40 C.F.R. § 68.130, Table 1.

13. The Risk Management Program regulations require that the owner or operator of a

facility subject to the regulations develop and implement a Risk Management Plan (RMP) for preventing accidental releases to the air and minimizing the consequences of releases that do occur. *See* 40 C.F.R. § 68.12.

14. A facility's RMP must, among other things, describe the stationary source and regulated substances handled at the facility. *See* 40 C.F.R. § 68.155(b).

15. A facility's RMP must be submitted no later than: June 21, 1999; three years after the date on which the regulated substance is first listed under 40 C.F.R. § 68.130; or the date on which a regulated substance is first present in more than a threshold quantity in a process, whichever is later. *See* 40 C.F.R. §§ 68.10(a) and 68.150.

16. The processes subject to these requirements are divided into three tiers of eligibility: Programs 1, 2, and 3. *See* 40 C.F.R. § 68.10.

17. Program 3 applies to all processes which do not meet the requirements of 40 C.F.R. § 68.10(b) and are subject to the OSHA Process Safety Management (PSM) standard set forth at 29 C.F.R. § 1910.119. *See* 40 C.F.R. § 68.10(d).

18. The owner or operator of a stationary source with a process subject to Program 3 requirements shall implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87.

19. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation, up to \$295,000 for CAA violations that occurred after January 12, 2009 through December 6, 2013; up to \$37,500 per day of violation, up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015; and up to \$44,359 per day of violation, up to a total of \$356,312 for CAA violations that occurred after November 2, 2015, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

20. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

21. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

Factual Allegations and Alleged Violations

22. The Respondent owns and operates a chemical and lubricant distribution facility located at 1827 Eighteenth Ave., Rockford, Illinois 61104 (the Facility).

23. At the Facility, the Respondent is engaged in the business of receiving and storing chlorine cylinders for resale to municipalities.

24. The Respondent is a "person," as that term is defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

25. The Facility is a "stationary source" as that term is defined at 40 C.F.R. § 68.3.

26. For purposes of the requirements at 40 C.F.R. Part 68, the Respondent is the "owner or operator" of the Facility as that term is defined at Section 112(a)(9) of the Act.

27. The Respondent can store up to 40,000 lbs. of chlorine on site. The chlorine is stored in cylinders ranging from 150-lbs. to 1-ton.

28. In its RMPs submitted in December 2004 and December 2009, the Respondent reported in its RMP the storage of chlorine in cylinders as part of a covered process.

29. The total amount of chlorine in the cylinders is above the threshold quantity of

2,500 pounds.

30. The chlorine cylinders are a “process,” as that term is defined at 40 C.F.R. § 68.3.

31. The cylinders storage process is subject to the “Program 3” eligibility requirements because the process: (a) does not meet the requirements of 40 C.F.R. § 68.10(b), because the distance to a toxic or flammable endpoint for a worst-case release assessment conducted under Subpart B and 40 C.F.R. § 68.25 is greater than the distance to any public receptor; and (b) is subject to the OSHA process safety management standard set forth at 29 C.F.R. § 1910.119 and 40 C.F.R. § 68.10(d) because the process involves chlorine above their respective threshold quantities.

32. On September 9, 2010, a representative from EPA conducted an inspection at the Facility under the authority of Section 114(a) of the Act, 42 U.S.C. § 7414(a). The purpose of the inspection was to determine whether the Respondent was complying at the Facility with Section 112(r) of the Act and the regulations at 40 C.F.R. Part 68.

33. Based on the inspection conducted by EPA, the Facility failed to comply with the Risk Management Program regulations at 40 C.F.R. Part 68 for Program 3 requirements as set forth in Paragraphs 34 and 35, below.

34. Respondent had not conducted a process hazard analysis on the process described in paragraph 27, above, as required by 40 C.F.R. § 68.67, on the date of EPA’s inspection. On November 4, 2014, Respondent performed a process hazard analysis on the process described in Paragraph 27, above, and submitted a copy to EPA.

35. Respondent failed to conduct a compliance audit on the process described in paragraph 27, above, as required by 40 C.F.R. § 68.79. On August 21, 2014 and November 4, 2014, Respondent conducted compliance audits on the process described in Paragraph 27, above,

and submitted copies to EPA.

Civil Penalty

36. Based on an analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and other factors such as cooperation and Respondent's agreement to perform a supplemental environmental project as described below, Complainant has determined that an appropriate civil penalty to settle this action is \$8,500. Complainant has also considered U.S. EPA's Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (June 2012).

37. Within 30 days after the effective date of this CAFO, Respondent must pay a \$8,500 civil penalty by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

38. In the comment area of the electronic funds transfer, state Respondent's name, the docket number of this CAFO and the billing document number.

39. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Silvia Palomo (SC-5J)
Chemical Emergency Preparedness and Prevention Section
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Louise Gross (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

40. This civil penalty is not deductible for federal tax purposes.

41. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

42. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Supplemental Environmental Project

43. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by purchasing turnout gear for the Rockford Fire Department.

44. Respondent must spend at least \$25,500 to purchase the emergency response equipment.

45. Within 30 days after the effective date of this CAFO, Respondent must complete the SEP.

46. Respondent certifies as follows:

I certify that Viking Chemical Co. is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Viking Chemical Co. has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Viking Chemical Co. is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to U.S. EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

47. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

48. Respondent must submit a SEP completion report to EPA by July 1, 2017. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

49. Respondent must submit all notices and reports required by this CAFO by first class mail to Silvia Palomo of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 39, above.

50. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

51. Following receipt of the SEP completion report described in paragraph 48, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 53.

52. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 53, below.

53. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 45, Respondent must pay a penalty of \$25,500.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 44, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent did not submit timely the SEP completion report or any other report required by paragraph 48, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty Per Violation Per Day</u>	<u>Period of Violation</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

54. U.S. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

55. Respondent must pay any stipulated penalties within 15 days of receiving

U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 37-38, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

56. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r)."

57. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

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

General Provisions

59. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following e-mail addresses: gross.louise@epa.gov (for Complainant), and bselander@vikingchemical.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

60. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

61. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

62. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws and regulations. Except as provided in Paragraph 60, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

63. Respondent certifies that it is complying fully with Section 112(r) of the Act and 40 C.F.R. Part 68.

64. The terms of this CAFO bind Respondent, its successors, and assigns.

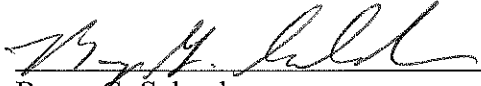
65. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

66. Each party agrees to bear its own costs and attorneys' fees in this action.


67. This CAFO constitutes the entire agreement between the parties.

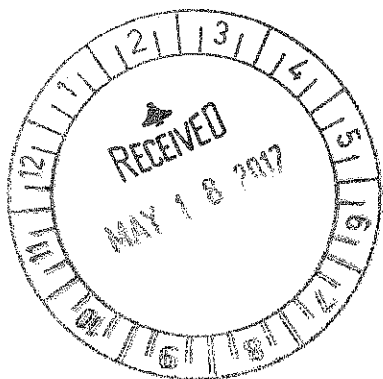
CONSENT AGREEMENT AND FINAL ORDER
In the Matter of Viking Chemical Company
Docket No. CAA-05-2017-0026

Viking Chemical Company, Respondent

Date: 5-14-17 By: 
Bryan G. Selander
General Counsel
Viking Chemical Company

United States Environmental Protection Agency, Complainant

Date: 6/2/2017 By: 
for Margaret Guerriero, Acting Director
Superfund Division



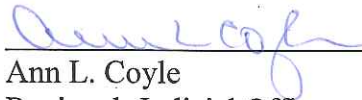
CONSENT AGREEMENT AND FINAL ORDER
In the Matter of Viking Chemical Company
Docket No. CAA-05-2017-0026

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

June 6, 2017

Date



Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of: Viking Chemical Company, Rockford, Illinois
Docket Number: CAA-05-2017-0026

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing Consent Agreement and Final Order, docket number CAA-05-2017-0026, which was filed on June 7, 2017, in the following manner to the addressees:

Copy by E-mail to Attorney for Respondent:

Bryan G. Selander
bselander@vikingchemical.com

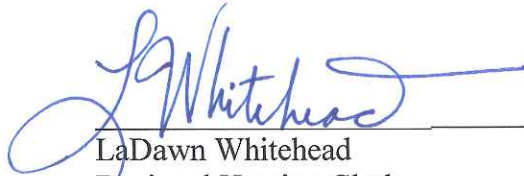
Copy by E-mail to
Attorney for Complainant:

Louise Gross
gross.louise@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: June 7, 2017



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

