

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

IN THE MATTER OF:	)	
	)	
	)	
TERRA INTERNATIONAL (OKLAHOMA), LLC	)	DOCKET NO. CAA-06-2021-3345
WOODWARD, OKLAHOMA	)	
	)	
RESPONDENT	)	
_____	)	

**CONSENT AGREEMENT AND FINAL ORDER**

The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 6 (EPA or Complainant) and Terra International (Oklahoma), LLC (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 112(r)(1) of the Clean Air Act (CAA or the Act), 42 United States Code (U.S.C.) § 7412(r)(1), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A).

3. For the purposes of settlement, the Respondent admits the jurisdictional allegations contained herein; however, the Respondent neither admits nor denies the Findings of Fact or Conclusions of Law contained in this CAFO. 40 C.F.R. § 22.18(b)(2).

4. For purposes of settlement, the Respondent waives its right to contest the allegations and its right to appeal the proposed Final Order set forth herein. 40 C.F.R. § 22.18(b)(2).

5. The Respondent does not waive any rights or defenses which may have been raised or could be raised in any state or local law proceeding. This CAFO may not be used in any federal, state or local proceeding except proceedings by EPA to enforce this CAFO. This CAFO shall not be used as evidence of any legal or factual admission by Respondent in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce the provisions of this CAFO.

6. Compliance with all the terms and conditions of this CAFO shall resolve the Respondent's liability for those violations and facts which are set forth herein. Subject to Respondent's compliance with this CAFO, EPA shall not pursue additional penalties based upon or related to the violations or facts which are set forth herein.

7. For purposes of settlement, the Respondent consents to the issuance of this CAFO and 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 this CAFO. 40 C.F.R. § 22.18(b)(2).

8. Nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive and criminal authorities, or that of other federal, state, or local agencies or departments to obtain penalties or injunctive relief under federal, state, or local laws or regulations, except as provided in the release specified in paragraph 6 above for the violations specifically identified in this CAFO.

40 C.F.R. § 22.18(b)(2).

9. The Respondent represents that the undersigned representative is fully authorized to enter into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind the Respondent to the terms and conditions of this CAFO.

10. This CAFO shall apply to and be binding upon the Respondent, its officers, directors, servants, employees, agents, authorized representatives, successors and assigns. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

## **II. STATUTORY AND REGULATORY BACKGROUND**

11. Sections 112(r)(1) and (3) of the CAA, 42 U.S.C. § 7412(r)(1) and (3), provide that the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance, pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and to minimize the consequences of any such release that does occur.

12. On November 15, 1990, Congress amended the CAA and added Section 112(r)(1), commonly known as the General Duty clause. Pursuant to Section 112(r)(1), the owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty, in the same manner and to the same extent as Section 654, Title 29 of the United States Code, to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

13. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the Administrator is authorized to hold owners and operators of facilities that have regulated and other extremely hazardous substances responsible for ensuring that their chemicals are managed safely. In this regard, owners and operators who have these substances must adhere, at a minimum, to recognized industry standards and practices (as well as any applicable government regulations) in order to be in compliance with the general duty clause.

14. Pursuant to Section 112(r)(1), EPA recognizes that unique circumstances may make a particular standard inapplicable. Also, there may be instances in which a facility must address specific conditions that are not addressed by industry standards, practices, or government regulations. Such a facility must nevertheless address its specific conditions in order to be in compliance with the general duty clause. Finally, there may be situations in which an existing industry standard or practice is simply inadequate to prevent accidents. In such situations, EPA may exercise its authority to require an owner or operator to implement additional measures to address the hazard.

15. Pursuant to Sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA, including, but not limited to, the general duty clause, or a requirement or prohibition of any rule promulgated under the CAA, but other than those requirements specified in Sections 113(a)(1), 113(a)(2) or 113(d)(1)(A) of the CAA (42 U.S.C. §§ 7413(a)(1), 7413(a)(2), or 7413(d)(1)(A)), the Administrator may issue an order assessing a civil administrative penalty.

16. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and as adjusted by the transmittal of the *Civil Monetary Penalty Inflation Adjustment*, 85 Federal Register (FR) 83818 - 83821 (December 23, 2020), and 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$48,762 per violation per day of violation occurring after November 2, 2015, where penalties are assessed on or after December 23, 2020.

17. “Accidental release” is defined in Section 112(r)(2)(A) as "an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from

a stationary source."

18. "Extremely hazardous substance" is not defined in Section 112(r); however, extremely hazardous substances listed pursuant to Section 112(r)(3) include anhydrous ammonia. Such substances are not limited to the list of regulated substances listed under Section 112(r) nor the extremely hazardous substances listed under EPCRA<sup>1</sup>.

19. "Owner or operator" shall mean any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7412(a)(9).

20. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as including 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.

21. "Regulated substance" is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to Section 112(r)(3) of the CAA as amended, in § 68.130.

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<sup>1</sup> Although there is no definition for extremely hazardous substances, the legislative history of the 1990 Clean Air Act Amendments suggests criteria which EPA may use to determine if a substance is extremely hazardous. The Senate Report stated the intent that the term "extremely hazardous substance" would include any agent "which may or may not be listed or otherwise identified by any Government agency which may as the result of short-term exposures associated with releases to the air cause death, injury or property damage due to its toxicity, reactivity, flammability, volatility, or corrosivity" (Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Senate Report No. 228, 101st Congress, 1st Session 211 (1989) - "Senate Report"). Further, the Senate Report states, "the release of any Reference sources which may be used to establish that a substance may be extremely hazardous include: EPA's Toxic Substances Control Act Inventory (see [www.epa.gov](http://www.epa.gov)), National Institute of Occupational Safety and Health (see [www.cdc.gov/niosh/homepage](http://www.cdc.gov/niosh/homepage)), Occupational Safety Health Administration (see [www.osha.gov](http://www.osha.gov)), American Conference of Governmental Industrial Hygienists (see [www.acgih.org](http://www.acgih.org)), Agency for Toxic Substances Disease Registry (see [www.cdc.gov/atsdrhome](http://www.cdc.gov/atsdrhome)), Centers for Disease Control (see [www.cdc.gov](http://www.cdc.gov)) and National Fire Protection Association (see [www.nfpa.org](http://www.nfpa.org)), or a substance which causes death or serious injury because of its acute toxic effect, or as a result of an explosion or fire, or which causes substantial property damage by blast, fire, corrosion or other reaction, would create a presumption that such substance is extremely hazardous." *Senate Report at 211.*

22. “Stationary source” is defined in Section 112(r)(2)(C) of the CAA and 40 C.F.R. § 68.3 as any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

**III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

23. The Respondent is a company authorized to do business in the State of Oklahoma.

24. The Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).

25. At all times relevant to this CAFO, Respondent owned and operated the facility located at 1000 Terra Drive, Woodward, OK 73801 (Facility).

26. The Facility’s North American Industry Classification System (NAICS) code is 325311 Nitrogenous Fertilizer Manufacturing.

27. The Facility is a nitrogenous fertilizer manufacturing facility that produces anhydrous ammonia, urea solutions, urea-ammonium nitrate and by-product gaseous carbon dioxide. The Facility also produces intermediates (including nitric acid and ammonium nitrate solution) during the manufacture of the above products.

28. Anhydrous ammonia is an extremely hazardous substance.

29. Based on the quantity of anhydrous ammonia present at the Facility, the Facility is subject to the following requirements of the general duty clause:

a. Identify hazards which may result from accidental releases using appropriate hazard assessment techniques;

b. Design and maintain a safe facility taking such steps as are necessary to prevent releases;  
and

c. Minimize the consequences of accidental releases which do occur.

30. On June 2, 2020, Respondent's Operations Department began the process of starting the Upgrade #2 Plant. The #2 Urea Plant was started at 10:41 p.m. on June 2, 2020, followed by the #2 Acid Plant at 12:19 a.m. on June 3, 2020. Ammonia was introduced to the NOx abator (SCR control system) associated with the #2 Acid Plant at 12:23 a.m. on June 3, 2020 to control NOx emissions per the operating procedure. When the #2 Acid Plant reached full rates at 2:05 a.m., the operators noticed that the NOx concentration levels were elevated (more than 40 ppm). Trouble shooting was taking place by the operations group to determine the reason for the elevated NOx. In response to the elevated NOx, the flow of ammonia was increased to the SCR to reduce the concentration. The increase in ammonia flow to the SCR did not show an expected decrease in NOx concentration.

31. At approximately 2:30 p.m. on June 3, 2020, Operations communicated the concern of elevated NOx concentration to the Environmental Coordinator. During the conversation, Operations also informed the Environmental Coordinator that the Stack ammonia (NH<sub>3</sub>) Analyzer was showing elevated ammonia slippage (~200 ppm), indicating there was sufficient ammonia flowing into the NOx abatement system to control NOx under normal operating conditions.

32. During the "3:00 p.m. Maintenance/Operations" meeting, the Environmental Team notified the Operation's Department Superintendent that the elevated ammonia slippage had the potential to result in a reportable release of ammonia. The Superintendent immediately notified the

Shift Supervisor, and notifications were made to all agencies as the plant was shut down and secured.

33. On June 3, 2020, anhydrous ammonia was accidentally released into the atmosphere from the stack associated with the #2 Acid Plant, and the same was in excess of the reportable threshold of 100 pounds.

34. During the release, operations personnel failed to identify excess NH<sub>3</sub> usage when elevated NO<sub>x</sub> levels did not react to the increase in ammonia feed to the SCR unit. In the Facility's Incident Report, Respondent stated the above resulted from "a failure to follow Operating Procedure No. ACOP-2004." Item IX.D of Operating Procedure No. ACOP-2004 specifies "excess NH<sub>3</sub> usage may indicate a leak in the heat train" and constitutes a plant shutdown as described in the Emergency Shutdown Procedures section of the Operating Procedures which would have mitigated the duration and quantity of NH<sub>3</sub> release.

35. In the Incident Report, Respondent identified 19 recommended actions, all of which were completed by the end of September 2020. The recommended actions included retraining operations personnel on Operating Procedure No. ACOP-2004, establishing ammonia slip control parameters for the NO<sub>x</sub> Abatement system, updating tools and procedures for converting ammonia concentrations from ppm into lbs/hr, updating of operating procedures for the NO<sub>x</sub> Abatement system, and review and update other Facility processes in which it may be possible to create an environmental release due to not having environmental release limits established in the procedures.

#### **IV. VIOLATIONS**

**Count 1: General Duty Clause [Clean Air Act § 112(r)(1)] - Design and maintain a safe facility taking such steps as are necessary to prevent releases.**



36. Operating Procedure No. ACOP-2004 did not identify corrective measures which would have allowed trained Facility personnel to mitigate the duration and quantity of the release.

37. Therefore, the Respondent violated the General Duty Clause of Section 112(r)(1) of the CAA by failing to design and maintain a safe facility as necessary to prevent the release.

**V. CIVIL PENALTY AND TERMS OF SETTLEMENT**

38. Upon consideration of the entire record herein, and upon consideration (in addition to such other factors as justice may require) of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply (including Respondent's prompt corrective actions as described above), the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation, the parties agree that thirty-nine thousand and ten dollars (\$39,010) is an appropriate penalty to resolve this matter.

39. Within thirty (30) days of the effective date of this fully executed CAFO, the Respondent shall pay the above assessed civil penalty by company check, 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-06-2021-3345 shall be clearly typed or written 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 transmit by electronic mail 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  
Buchanan.Kayla@EPA.gov

Lorena Vaughn  
Regional Hearing Clerk (ORCD)  
U.S. EPA, Region 6  
Vaughn.Lorena@EPA.gov

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

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

41. 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.

42. 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).

43. 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 unpaid penalties which remain delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge 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.

44. 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 ten percent (10%) of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

#### **VI. RETENTION OF ENFORCEMENT RIGHTS**

45. Except as set forth in Paragraph 6, EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of federal or state laws, regulations, statutes, or permitting programs.

46. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.

47. 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, or regulated or other extremely hazardous substances at, on, or from the Respondent's Facility.

48. Except as set forth in Paragraph 6, nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, or 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, regulations, or subparts thereof.

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

To EPA: Pittman.Lawrence@EPA.gov

To Respondent: mpeters@ryanwhaley.com

#### **VII. COSTS**

50. Each party shall bear its own costs and attorney's fees.

IT IS SO AGREED:

FOR THE RESPONDENT:

Date: 6/3/2021

DocuSigned by:  
*Spencer M. Carnine*  
B74F4511F8B64AC...

Terra International (Oklahoma) LLC

FOR THE COMPLAINANT:

Date: \_\_\_\_\_

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

**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 for 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.

Date: \_\_\_\_\_

\_\_\_\_\_  
Thomas Rucki  
Regional Judicial Officer



**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was electronically delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270, and that a true and correct copy was sent this day in the following manner to the addresses:

Copy via email to Complainant:

[Pittman.Lawrence@EPA.gov](mailto:Pittman.Lawrence@EPA.gov)

Copy via email to Respondent:

[bflanagan@cfindustries.com](mailto:bflanagan@cfindustries.com)

[mpeters@ryanwhaley.com](mailto:mpeters@ryanwhaley.com)

Copy via email to Regional Hearing Clerk:

[Vaughn.lorena@EPA.gov](mailto:Vaughn.lorena@EPA.gov)

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Office of Regional Counsel  
U.S. EPA Region 6, Dallas, Texas