



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202 - 2733

JUN 23 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7008 0150 0003 0418 3695

Mr. Russell Allen
CEO
KSolv, LP
9600 Katy Freeway
Houston, Texas 77055


Re: K-Solv, LP, Docket No. EPCRA-06-2016-0502

Dear Mr. Allen:

Enclosed is the fully executed Consent Agreement and Final Order (CAFO) in the matter referenced above. As provided in the CAFO, KSolv must make its first payment of \$10,000 by July 15, 2016, with subsequent payments required as detailed in paragraph 48 of the CAFO in order to pay the civil penalty of \$50,000.

If you have any questions please contact me at (214) 665-7302 or by email at murdock.james@epa.gov.

Sincerely,


for James Murdock
Assistant Regional Counsel

Enclosure

cc: Chris Pepper

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2018.11.12
RECEIVED
EPCRA-06-2016-0502

IN THE MATTER OF:

K-SOLV LP
CHANNELVIEW, TEXAS

RESPONDENT

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DOCKET NO. EPCRA-06-2016-0502

CONSENT AGREEMENT AND FINAL ORDER

The Complainant, Director of the Compliance Assurance and Enforcement Division, United States Environmental Protection Agency (EPA), Region 6 (Complainant), and K-SOLV LP, (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 pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c), is simultaneously commenced and concluded by the issuance of this CAFO against the Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations 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 therein, 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 resolve only those violations which are set forth herein.

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

6. The Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

7. The Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

8. The Respondent hereby certifies that as of the date of the execution of this CAFO, Respondent has corrected the violations alleged in this CAFO and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

II. STATUTORY AND REGULATORY BACKGROUND

9. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that: (a) has ten or more full-time employees; (b) that is an establishment with a primary Standard Industrial Classification (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a), or a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) “manufactured, processed, or otherwise used” a toxic chemical listed under

Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Subsection 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, or 372.28 during the calendar year, to complete and submit a toxic chemical release inventory Form R to the Administrator of EPA and to the State in which the subject facility is located by July 1, for the preceding calendar year, for each toxic chemical known by the owner or operator to be “manufactured, processed, or otherwise used” in quantities exceeding the established threshold quantity during that preceding calendar year.

10. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30, is 25,000 pounds for any toxic chemical “manufactured or processed,” and 10,000 pounds for any toxic chemical “otherwise used” for the applicable calendar year. Alternative reporting thresholds are set forth in 40 C.F.R. §§ 372.27 and 372.28.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

11. The Respondent is a partnership formed under the laws of the State of Texas, and is authorized to do business in the State of Texas.

12. The Respondent is a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

13. The Respondent owns and operates a manufacturing facility located at 1007 Lakeside Drive, Channelview, TX 77530.

14. The facility identified in Paragraph 13 is a “facility”, as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

15. Respondent's facility had ten or more “full-time employees” as that term is defined by 40 C.F.R. § 372.3 for calendar years 2010 through 2014.

16. The Respondent's facility’s primary Standard Industrial Classification (SIC) code 5171 [petroleum bulk stations and terminals] and primary North American Industrial Classification System (NAICS) subsector or industry code 424710 [petroleum bulk stations and terminals] is covered under 40 C.F.R. Part 372 and applies to a facility with these primary codes.

17. During calendar years 2010 through 2014, Respondent’s facility “manufactured, processed, or otherwise used” certain glycol ethers, ethylene glycol, methanol, N-butyl alcohol, N-hexane, styrene, tetrachloroethylene, toluene, and xylene (mixed isomers) ” in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25.

18. Certain glycol ethers, ethylene glycol, methanol, N-butyl alcohol, N-hexane, styrene, tetrachloroethylene, toluene, and xylene (mixed isomers) are toxic chemicals within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

19. On July 15, 2015, a representative from EPA, conducted an on-site inspection of K-Solv LP, located at 1007 Lakeside Drive, Channelview, TX 77530.

B. VIOLATIONS

i. Certain Glycol Ethers

20. During calendar year 2013, Respondent “manufactured, processed, or otherwise used” certain glycol ethers in excess of the applicable threshold quantity.

21. Respondent failed to submit the required Form R for certain glycol ethers by July 1st of 2014.

22. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for certain glycol ethers for calendar year 2013 to EPA and to the State of Texas by the applicable due date.

ii. Methanol

23. During calendar year 2013, Respondent “manufactured, processed, or otherwise used” methanol in excess of the applicable threshold quantity.

24. Respondent failed to submit the required Form R for methanol by July 1st of 2014.

25. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for methanol for calendar year 2013 to EPA and to the State of Texas by the applicable due date.

iii. N-Butyl Alcohol

26. During calendar year 2013, Respondent “manufactured, processed, or otherwise used” n-Butyl alcohol in excess of the applicable threshold quantity.

27. Respondent failed to submit the required Form R for n-Butyl alcohol by July 1st of 2014.

28. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for n-Butyl alcohol for calendar year 2013 to EPA and to the State of Texas by the applicable due date.

iv. N-Hexane

29. During calendar year 2013, Respondent “manufactured, processed, or otherwise used” n-Hexane in excess of the applicable threshold quantity.

30. Respondent failed to submit the required Form R for n-Hexane by July 1st of 2014.

31. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for n-Hexane for calendar year 2013 to EPA and to the State of Texas by the applicable due date.

v. Styrene

32. During calendar year 2013, Respondent “manufactured, processed, or otherwise used” styrene in excess of the applicable threshold quantity.

33. Respondent failed to submit the required Form R for styrene by July 1st of 2014.

34. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for styrene for calendar year 2013 to EPA and to the State of Texas by the applicable due date.

vi. Tetrachloroethylene

35. During calendar year 2013, Respondent “manufactured, processed, or otherwise used” tetrachloroethylene in excess of the applicable threshold quantity.

36. Respondent failed to submit the required Form R for tetrachloroethylene by July 1st of 2014.

37. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for tetrachloroethylene for calendar year 2013 to EPA and to the State of Texas by the applicable due date.

vii. Toluene

38. During calendar year 2013, Respondent “manufactured, processed, or otherwise used” toluene in excess of the applicable threshold quantity.

39. Respondent failed to submit the required Form R for toluene by July 1st of 2014.

40. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for toluene for calendar year 2013 to EPA and to the State of Texas by the applicable due date.

viii. Xylene (Mixed Isomers)

41. During calendar year 2013, Respondent “manufactured, processed, or otherwise used” xylene (mixed isomers) in excess of the applicable threshold quantity.

42. Respondent failed to submit the required Form R for xylene (mixed isomers) by July 1st of 2014.

43. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for xylene

(mixed isomers) for calendar year 2013 to EPA and to the State of Texas by the applicable due date.

ix. Ethylene Glycol

44. During calendar years 2010 to 2013, Respondent “manufactured, processed, or otherwise used” ethylene glycol in excess of the applicable threshold quantity.

45. For calendar years 2010 to 2013, Respondent failed to submit the required Form R for ethylene glycol by July 1st of the following year.

46. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for ethylene glycol for calendar years 2010 to 2013 to EPA and to the State of Texas by the applicable due date.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

47. For the reasons set forth above, the Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), which authorizes EPA to assess a civil penalty of up to Thirty-Seven Thousand Five Hundred Dollars (\$37,500) per day for each violation of EPCRA.¹ However, after considering the Respondent’s ability to pay, the penalty is reduced to \$50,000. Upon consideration of the entire

¹ The amount of penalty that can be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$27,500 per day for violations occurring between January 30, 1997 and March 15, 2004, and \$32,500 per day for violations which occurred between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for violations which occurred after January 12, 2009.

record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the nature, circumstances, extent and gravity of the alleged violations, Respondent's ability to pay, and other factors as justice may require, it is **ORDERED** that Respondent be assessed a civil penalty of **Fifty Thousand Dollars and no cents (\$50,000)**.

48. The penalty will be paid according to the following schedule:

July 15, 2016 - \$10,000
January 15, 2017 - \$10,000
July 15, 2017 - \$10,000
January 15, 2018 - \$10,000
July 15, 2018 - \$10,000

49. Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph.

50. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the first assessed civil penalty installment by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Subsequent civil penalty installments shall follow the above schedule. Payment shall be remitted in one of three (3) ways: regular U.S. Postal Service mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

In the Matter of K-Solv. LP. Docket No. EPCRA 06-2016-0502

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) 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 = 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"

PLEASE NOTE: Docket number EPCRA 06-2016-0502 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:

Morton Wakeland
EPCRA 313 Enforcement
Toxics Section (6EN-H3)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200

Dallas, TX 75202-2733;

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

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

51. 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.

52. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action pursuant to Section 325(f) of EPCRA, 42 U.S.C. § 11045(f), to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

53. 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).

54. 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 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.

55. This document is a "Final Order" as that term is defined in the "Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)," dated August 10, 1992; Amended, April 12, 2001; for the purpose of demonstrating a history of "prior such violations".

B. RETENTION OF ENFORCEMENT RIGHTS

56. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

57. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

58. Except as specifically provided in this CAFO, nothing herein 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. Furthermore, nothing in this CAFO shall be construed to prevent or limit 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.

C. COSTS

59. 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.

D. TERMINATION

60. At such time as the Respondent believes that it has complied with all terms and conditions of this CAFO, it may request that EPA concur whether the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing as expeditiously as possible. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondent has been notified by EPA in writing that this CAFO has been satisfied and terminated.

E. EFFECTIVE DATE

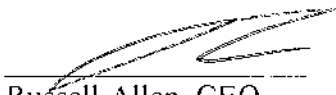
61. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

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

FOR THE RESPONDENT:

Date: 06/03/16

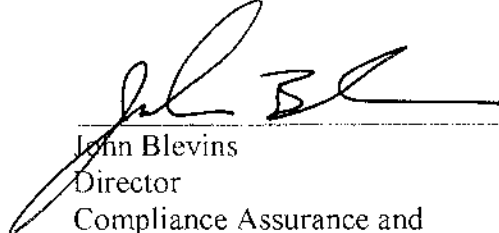
*DATE
6/2/16*



Russell Allen, CEO
K-Solv, LP
9600 Katy Freeway
Houston, TX 77055

FOR THE COMPLAINANT:

Date: 6.21.16



John Blevins
Director
Compliance Assurance and
Enforcement Division

V. FINAL ORDER

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), 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 or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect 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 and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated JUN 23 2016



Thomas Rucki
Regional Judicial Officer

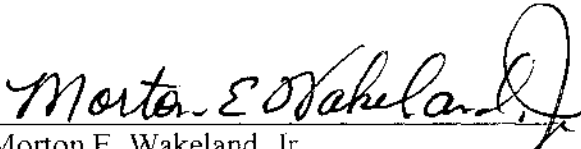
CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of 2016, 2016, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED # 7008 0150 0003 0418 3695

Via Email (PDF):

Chris Pepper
Attorney for Respondent
Austin, Texas
cpepper@winstead.com


Morton E. Wakeland, Jr.
EPCRA § 313 Enforcement and TRI Program
Coordinator
U.S. EPA Region 6
Dallas, TX 75202