

**ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS**

FILED  
2018 SEP 11 AM 11:20  
REGIONAL HEARING CLERK  
EPA REGION VI

**IN THE MATTER OF:**

**Ascend Performance Materials Texas, Inc.**

**Alvin, Texas**

**Respondent**

**CONSENT AGREEMENT  
AND FINAL ORDER  
EPA DOCKET NO. CAA-06-2018-3331**

**CONSENT AGREEMENT**

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Ascend Performance Materials Texas, Inc. (“Respondent”), at its facility located at FM 2917, Alvin, Texas, have agreed to simultaneously commence and 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 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d), as amended, is simultaneously commenced and concluded by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.34.

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO. However, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4. Respondent waives any right to contest the allegations in the CAFO and its right to appeal the 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.

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

6. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil monetary penalties for the violations and facts alleged in the CAFO.

7. This CAFO may not be used in any federal or state proceeding except proceedings by EPA to enforce this CAFO.

8. Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this CAFO.

9. Respondent represents the undersigned representative and is fully authorized by the Party whom he or she represents 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. Respondent agrees the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

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

11. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental

release of regulated substances or other extremely hazardous substances and to minimize the consequences of any such release that does occur.

12. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), provides in pertinent part:

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

\* \* \* \*

(B)(i) [ . . . ] the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operator of the sources of such releases.

\* \* \* \*

(B)(ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection.

13. On June 20, 1996, the EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA.

14. 40 C.F.R. Part 68 provides general requirements applicable to owners or operators of a stationary source subject to Part 68. It also establishes requirements that apply to an owner or operator based on whether the stationary source operates processes subject to one of three “Programs” -- Program 1, Program 2, and Program 3.

15. Under 40 C.F.R. § 68.10(a), an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process (“Covered Process”), as determined under 40 C.F.R. § 68.115, shall comply with the requirements of 40 C.F.R. Part 68 no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under Section 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

16. Under 40 C.F.R. § 68.12(a), an owner or operator of a stationary source subject to Part 68 requirements must submit a Risk Management Plan (“RMP”) as provided in 40 C.F.R. Part 68 Subpart G (§§ 68.150-68.185) that reflects all covered processes at the stationary source.

17. Under 40 C.F.R. § 68.12(d), the owner or operator of a stationary source with a process subject to the “Program 3” requirements of the Part 68 regulations, as determined pursuant to 40 C.F.R. § 68.10(d), must do the following: develop and implement a management system as provided in § 68.15; conduct a hazard assessment as provided in §§ 68.20 through 68.42; implement the prevention requirements of §§ 68.65 through 68.87; develop and implement an emergency response program as provided in §§ 68.90 to 68.95; and submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in § 68.175.

18. “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.

19. “Process” is defined in 40 C.F.R. § 68.3 as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such

substances, or combination of these activities. For the purposes 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.

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

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.

22. RMP is defined in 40 C.F.R. § 68.3 under subpart G of 40 C.F.R. Part 68.

23. “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 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.

24. “Threshold quantity” is defined in 40 C.F.R. § 68.3 as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA as amended, listed in § 68.130, and determined to be present at a stationary source as specified in § 68.115 of this part.

25. “Owner or operator” shall mean any person who owns, leases, operates, controls, or supervises a stationary source.

26. Under Sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) & 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, a requirement or prohibition of any rule promulgated under the CAA, 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.

27. EPA has determined this matter is appropriate for administrative resolution, including the assessment of a civil penalty.

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

28. Respondent is a limited liability company and authorized to do business in the State of Texas.

29. Respondent is a "person" as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

30. At all times relevant to this CAFO, Respondent owned and operated a chemical manufacturing facility ("Facility") located at FM 2917, Alvin, Texas 77512.

31. The Facility operates a variety of chemical manufacturing processes (Primary NAICS Code 325199 – All Other Basic Organic Chemical Manufacturing).

32. Respondent's RMP lists covered processes subject to Program 3 requirements.

33. The regulated substances held above the threshold quantities identified in 40 C.F.R. § 68.130 include the following: ammonia, formaldehyde, hydrocyanic acid, sulfur dioxide, hydrofluoric acid, acrylonitrile, and propylene.

34. As a facility with Program 3 processes, Respondent must: develop and implement a management system as provided in § 68.15; conduct a hazard assessment as provided in §§ 68.20 through 68.42; implement the prevention requirements of §§ 68.65 through 68.87; develop and implement an emergency response program as provided in §§ 68.90 to 68.95; and submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in § 68.175.

35. From January 9-13, 2017, EPA Region 6 conducted an inspection ("2017

Inspection”) of the Facility pursuant to the CAA § 114(a)(2), 42 U.S.C. § 7414(a)(2). The inspection focused on compliance with CAA § 112(r), 42 U.S.C. § 7412(r), and the implementing regulations found at 40 C.F.R. Part 68.

#### IV. VIOLATIONS

##### **Count 1. Process Hazard Analysis**

36. Complainant hereby restates and incorporates by reference Paragraphs 1 through 35 above.

37. 40 C.F.R. § 68.67(f) requires that the process hazard analysis (“PHA”) shall be updated and revalidated at least every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process.

38. At the time of the 2017 Inspection, Respondent provided documentation that showed a failure to revalidate the Distribution PHA and the LAB PHA within the five-year period as required by 40 C.F.R. § 68.67(f). Revalidation for the Distribution PHA, completed prior to the 2017 Inspection on November 5, 2014, should have been completed by September 30, 2014; revalidation for the LAB PHA, completed prior to the 2017 Inspection on August 29, 2013, should have been completed by July 27, 2012.

39. Complainant finds Respondent’s failure to timely revalidate the Distribution PHA and the LAB PHA was a violation of 40 C.F.R. § 68.67(f).

##### **Count 2. Operating Procedures**

40. Complainant hereby restates and incorporates by reference Paragraphs 1 through 35 above.

41. 40 C.F.R. § 68.69(c) requires an owner or operator to certify annually that operating procedures reflect current operating practice and are accurate.

42. At the time of the 2017 Inspection and in the time since the 2017 Inspection, Respondent failed to provide Complainant with information showing consistent documentation of annual certifications for several operating procedures.

43. Complainant finds Respondent's failure to annually certify the operating procedures were a violation of 40 C.F.R. § 68.69(c).

**Count 3. Operating Procedures**

44. Complainant hereby restates and incorporates by reference Paragraphs 1 through 35 above.

45. 40 C.F.R. § 68.71(b) requires that refresher training shall be provided at least every three years to each employee involved in operating a process.

46. 40 C.F.R. § 68.71(c) requires that an owner or operator shall prepare a record that contains the identity of each employee that has received training, the date of training, and the means used to verify that the employee understood training.

47. At the time of the 2017 Inspection and in the time since the 2017 Inspection, Respondent failed to provide Complainant with information showing that Respondent had properly implemented all the elements of a training and recertification program as required by 40 C.F.R. § 68.71(b).

48. At the time of the 2017 Inspection, Respondent provided training documentation that was missing some of the information required by 40 C.F.R. § 68.71(c).

49. Complainant finds Respondent's failure to properly implement a training and recertification was a violation of 40 C.F.R. § 68.71(b).

50. Complainant finds Respondent's failure to properly prepare training documentation and records was a violation of 40 C.F.R. § 68.71(c).



**Count 4. Mechanical Integrity**

51. Complainant hereby restates and incorporates by reference Paragraphs 1 through 35 above.

52. 40 C.F.R. § 68.73(d) requires an owner or operator to inspect and test process equipment as required by industry standard or manufacturer's instruction.

53. At the time of the 2017 Inspection, Respondent provided documentation that inspection and testing were not always conducted in a timely manner as required by industry standard. Respondent claimed that some of the past due inspections had been properly deferred, but Respondent was unable to provide Complainant with any documentation showing that these deferrals had been properly granted.

54. Complainant finds Respondent's failure to conduct inspections and testing of process equipment was a violation of 40 C.F.R. § 68.73(d).

**V. TERMS OF SETTLEMENT**

55. Section 113(d)(1) of CAA, 42 U.S.C. § 7413(d)(1), authorizes the Administrator to assess a penalty up to \$46,192 for each violation of any requirement of Section 112(r) of CAA, 42 U.S.C. § 7412(r).<sup>1</sup>

56. 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, 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

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<sup>1</sup> As adjusted by the 2018 Civil Monetary Penalty Inflation Adjustment Rule (83 Fed. Reg. 1190), 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$46,192 per day of violation for a violation occurring after November 2, 2015.

the violation, the parties agree Sixty Thousand Dollars (\$60,000.00) is an appropriate penalty to resolve this matter.

57. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the assessed civil penalty by cashier's check, certified 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 Service mail, to include 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  
PO Box 979077  
St. Louis, MO 63197-9000

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

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045

Note: Field Tag 4200 of the Fedwire message should read: "D 68010727  
Environmental Protection Agency" with phone number (412) 234-4381.

**PLEASE NOTE: The docket number CAA 06-2018-3331 shall be clearly typed on the**

**check to ensure proper credit.** The payment shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following:

Sherronda Phelps  
Enforcement Officer (6EN-AS)  
Chemical Accident Enforcement Section  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
10625 Fallstone Rd.  
Houston, Texas 77099

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

58. 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.

59. 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).

60. EPA will also assess a fifteen-dollar (\$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 fifteen-dollars (\$15.00) for each subsequent thirty (30) day period 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.

61. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order, after the order or assessment has become final, the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621(a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. 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 such quarter.

62. This CAFO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of any equipment or technology installed by the Respondent in connection with any additional settlement terms undertaken pursuant to this CAFO. Nothing in this CAFO shall be construed to prohibit or prevent the federal, state, or local government from developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required.

63. This document constitutes a "Final Order" as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of "prior such violations."

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

64. 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.

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

66. 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. Furthermore, 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.

67. 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 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.

#### **VII. COSTS**

68. 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.

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

**FOR THE RESPONDENT:**

Date: 8/24/2018



Ascend Performance Materials Texas, Inc.

Paul CARTRIDGE

Vice President, Environment Safety Security Health.

**FOR THE COMPLAINANT:**

Date: 9-6-2018



Cheryl T. Seager

Director

Compliance Assurance and  
Enforcement Division

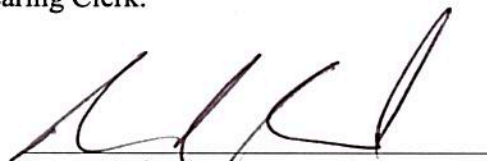
U.S. EPA Region 6

**FINAL ORDER**

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), 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

10 Sept 2018

  
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Renea Ryland  
Regional Judicial Officer  
U.S. EPA, Region 6



**CERTIFICATE OF SERVICE**

I hereby certify that on the 1<sup>th</sup> day of Sept., 2018, the original and one copy of the foregoing Consent Agreement and Final Order 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 was delivered to the following individual(s) by the method indicated below:

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED:**

Mr. Timothy A. Wilkins  
Managing Partner, Austin  
Bracewell LLP  
111 Congress Ave., Suite 2300  
Austin, TX 78701-4061



Lori Jackson  
Paralegal  
U.S. EPA Region 6, Dallas, Texas