



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

JUL 03 2007

REPLY TO THE ATTENTION OF:

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Todd R. Weiner
McDermott, Will & Emery
227 West Monroe Street
Chicago, Illinois 60606-5096

Dear Mr. Weiner:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves BASF Construction Chemicals, LLC, f/k/a BASF Admixtures, Inc., f/k/a Degussa Admixtures, Inc., CAA Docket No. CAA-05-2007-0012. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on JUL 03 2007.

Pursuant to paragraph 30 of the CAFO, the Respondent must pay the civil penalty within 30 days of JUL 03 2007. The check must display the case docket number, CAA-05-2007-0012, and the billing document number, 2750703A016.

Please direct any questions regarding this case to Mony Chabria, Associate Regional Counsel, at (312) 886-6842.

Sincerely yours,

Bonnie Bush, Acting Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. **CAA-05-2007-0012**
)
BASF Construction Chemicals, LLC) Proceeding to Assess a Civil
f/k/a BASF Admixtures, Inc.) Penalty under Section 113(d) of the
f/k/a Degussa Admixtures, Inc.) Clean Air Act, 42 U.S.C. § 7413(d)
Cleveland, Ohio,)
)
Respondent.

Consent Agreement and Final Order

I. 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) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), 40 C.F.R. §§ 22.1(a)(2), 22.13(b), and 22.18(b).

2. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brings this administrative action seeking a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

3. Respondent is BASF Construction Chemicals, LLC, formerly known as BASF Admixtures, Inc., formerly known as Degussa Admixtures, Inc., (Respondent), a corporation doing business in Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).

II. Statutory and Regulatory Background

5. Section 183(e) of the Act, 42 U.S.C. § 7511b(e), authorizes U.S. EPA to promulgate regulations establishing requirements regarding the manufacture of certain consumer or commercial products, the use of which may result in the release of volatile organic compounds (VOCs).

6. Pursuant to Section 183(e) of the Act, 42 U.S.C. § 7511b(e), on September 11, 1998, U.S. EPA promulgated the National VOC Emission Standards for Architectural Coatings at 40 C.F.R. Part 59, Subpart D (the Architectural Coatings Rule).

7. The Architectural Coatings Rule applies to each “architectural coating,” as that term is defined at 40 C.F.R. § 59.401, manufactured on or after September 13, 1999, for sale or distribution in the United States.

8. The Architectural Coatings Rule, at 40 C.F.R. § 59.401, defines “manufacturer” as a person that produces, packages, or repackages architectural coatings for sale or distribution in the United States.

9. The Architectural Coatings Rule, at 40 C.F.R. § 59.402(a), requires each manufacturer of any architectural coating subject to the Architectural Coatings Rule to ensure that the VOC content of the coating does not exceed the applicable limit in Table 1 of the Architectural Coatings Rule, except as provided in Sections 59.403 and 59.404.

10. The Architectural Coatings Rule, at 40 C.F.R. § 59.403, states that each manufacturer of architectural coatings may exceed the applicable VOC content limit in Table 1 of the Architectural Coatings Rule if the manufacturer pays an annual exceedance fee.

11. The Architectural Coatings Rule, at 40 C.F.R. § 59.408(d), states that each manufacturer of architectural coatings that uses the exceedance fee provisions of Section 59.403

must submit the report and exceedance fee payment by March 1 following the calendar year in which the coating was manufactured.

12. The Architectural Coatings Rule, at 40 C.F.R. § 59.404, states that each manufacturer of architectural coatings may designate a limited quantity of coatings to be exempt from the VOC content limits in Table 1 of the Architectural Coatings Rule and the exceedance fee provisions of Section 59.403.

13. The Architectural Coatings Rule, at 40 C.F.R. § 59.408(e), states that each manufacturer of architectural coatings for which a tonnage exemption under Section 59.404 is claimed shall submit a report no later than March 1 of the year following the calendar year in which the exemption was claimed.

14. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations of the Architectural Coatings Rule that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

15. Section 113(d)(1) of the Act 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 the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

16. 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 violation alleged in this CAFO.

III. Factual Allegations

17. Respondent is located at 23700 Chagrin Boulevard, Cleveland, Ohio.
18. From September 13, 1999 through 2004, Respondent manufactured and distributed at least ten coatings, including, but not limited to, those listed in Table A.

Table A.

| Coating | VOC Content | VOC Limit | Years Manufactured | | | | |
|----------------------|----------------|--------------|--------------------|------|------|------|------|
| | | | 1999/2000 | 2001 | 2002 | 2003 | 2004 |
| MBT EA-SEALER | 709 | 600 | ✓ | ✓ | ✓ | ✓ | ✓ |
| MBT LO-LUSTRE SEALER | 760 | 600 | ✓ | ✓ | ✓ | ✓ | ✓ |
| PRECO CEMENTRATE | 704 | 350 | ✓ | | | | |
| MBT MOLD RELEASE | 755 | 450 | ✓ | ✓ | ✓ | ✓ | ✓ |
| MBT NON-GLOSS SEALER | 768 | 600 | ✓ | ✓ | ✓ | ✓ | ✓ |
| MBT Q-D | 755 | 450 | ✓ | ✓ | ✓ | ✓ | ✓ |
| MBT SOLVENT 106 | 849 | 450 | ✓ | ✓ | ✓ | ✓ | ✓ |
| RHEOFINISH 220i | 742 | 450 | ✓ | ✓ | ✓ | ✓ | ✓ |
| MBT RELEASE 101 | 669 | 450 | ✓ | | | ✓ | |
| MBT FORM-COTE | 847 | 450 | ✓ | ✓ | ✓ | ✓ | ✓ |

19. The coatings listed in Table A above were "architectural coatings," as defined in 40 C.F.R. § 59.401.
20. On February 28, 2006, Respondent submitted exceedance fee and tonnage exemption reports to U.S. EPA for each year from 1999 through 2005 for the architectural coatings listed in Table A, above.
21. On October 31, 2006, U.S. EPA issued a Finding of Violation to Respondent citing the violation addressed in this CAFO.

IV. Alleged Violation

22. As set forth above, Respondent exceeded the VOC content limits for the coatings listed in Table A without reporting and paying the exceedance fees and without submitting tonnage exemption reports for 1999/2000, 2001, 2002, 2003, and 2004, by March 1 of each

subsequent year, constituting a violation of 40 C.F.R. § 59.402(a).

V. Stipulations

23. Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations and the alleged violation set out in this CAFO.

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

25. 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 under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

26. Respondent certifies that, since 2005, it is no longer subject to the Architectural Coatings Rule due to its recommendation that all of its coatings be used solely for shop applications, as displayed on its coating labels and product literature, and its selling of coatings exclusively to industry.

27. 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.

VI. Civil Penalty

28. Pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e), in determining the amount of the penalty assessed, U.S. EPA took into account (in addition to other factors as justice may require) the size of Respondent's business, the economic impact of the penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payments by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

29. Based on an analysis of the above factors, including Respondent's cooperation

and certification that it is no longer subject to the Architectural Coatings Rule, U.S. EPA has determined that an appropriate civil penalty to settle this action would be \$43,591.

30. Respondent must pay the \$43,591 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," in accordance with paragraphs 31 and 32 below, within 30 days after the effective date of this CAFO.

31. Respondent must send the check to:

Attn: Patricia McKaveney
U.S. Environmental Protection Agency
P.O. Box 371531
Pittsburgh, PA 15251-7531

32. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number, must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check.

Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Mony Chabria, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

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

34. If Respondent does not pay timely the civil penalty, U.S. 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.

35. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Respondent will 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.

VII. General Provisions

36. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Alleged Violation section of this CAFO.

37. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

38. 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 36 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by U.S. EPA.

39. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Respondent's

“full compliance history” under Section 113(e) of the Act, 42 U.S.C. § 7413(e).


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

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


42. Each party agrees to bear its own costs and attorneys’ fees in this action.

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

U.S. Environmental Protection Agency, Complainant

Date: 6/26/2007 By: 
Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

BASF Construction Chemicals, LLC, Respondent

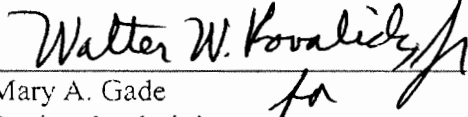
Date: JUNE 20/07 By: 
Name: JOHN SALVATORE
Title: CEO

CONSENT AGREEMENT AND FINAL ORDER
BASF Construction Chemicals, LLC, Cleveland, Ohio
Docket No. **CAA-05-2007-0012**

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order concludes this proceeding pursuant to 40 C.F.R. § 22.18.

Date: 7/2/07

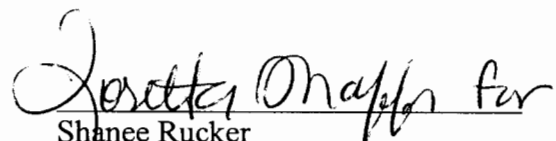

Mary A. Gade
Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered an original of the Consent Agreement and Final Order, docket number CAA-05-2007-0012, to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed an original of the Consent Agreement and Final Order by first-class, postage prepaid, certified mail, return receipt requested, to Todd Weiner, Counsel, by placing it in the custody of the United States Postal Service addressed as follows:

Todd R. Weiner
McDermott, Will & Emery
227 West Monroe Street
Chicago, Illinois 60606-5096

on the 3rd day of July, 2007.


Shanee Rucker
Administrative Program Assistant
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 8919 1983