



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1201 ELM STREET, SUITE 500  
DALLAS, TEXAS 75270

October 28, 2022

Via Electronic Mail:

[Shawn.roussel@m-chem.com](mailto:Shawn.roussel@m-chem.com)

Shawn Roussel  
HS&E Manager  
Mitsubishi Chemical America, Inc., La Porte, Texas Plant  
12220 Strang Road  
La Porte, Texas 77571

Re: Mitsubishi Chemical America, Inc.  
Docket No. CAA-06-2022-3347

Dear Mr. Roussel:

Enclosed is a Consent Agreement and Final Order (CAFO) for signature by an authorized representative of Mitsubishi Chemical America, Inc. On March 30, 2022, and at several other times subsequently, the U.S. Environmental Protection Agency (EPA) conferred with Mitsubishi Chemical America, Inc. regarding the violations alleged herein and provided several opportunities for Mitsubishi Chemical America, Inc. to submit additional information or materials. In accordance with those negotiations, please return the signed CAFO to Courtney Carter, with the Office of Regional Counsel, within one week by email at [Carter.courtney@epa.gov](mailto:Carter.courtney@epa.gov).

The signed CAFO will then be executed by the EPA, and a fully executed copy will be forwarded to you. As provided in the CAFO, Mitsubishi Chemical America, Inc. will have thirty (30) days from the effective date of the CAFO to pay the civil penalty of \$17,258. Additionally, Mitsubishi Chemical America, Inc. will have twelve (12) months from the effective date of the CAFO to purchase equipment and be in the possession of the Office of Emergency Management and Local Emergency Planning Committee described in its Supplemental Environmental Project (SEP). The total expenditure for the SEP shall be no less than \$64,719. If you have any questions regarding this CAFO, please contact Courtney Carter, Assistant Regional Counsel, (214) 665-8175. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Cheryl T. Seager".

Digitally signed by CHERYL  
SEAGER  
Date: 2022.10.28 14:21:02  
-05'00'

Cheryl T. Seager, Director  
Enforcement and  
Compliance Assurance Division

Enclosure

FILED

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1201 Elm Street, Suite 500  
Dallas, Texas 75270

REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of

Mitsubishi Chemical America, Inc.

Respondent.

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§  
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§

Docket No. CAA-06-2022-3347

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Mitsubishi Chemical America, Inc. (“Respondent”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, in which the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action, was appropriate for administrative penalty action.
2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions in

40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). Furthermore, this Consent Agreement and Final Order 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, of the EPA's intent to issue an order assessing penalties for these violations.

### Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division of EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondent is Mitsubishi Chemical America, Inc., a corporation authorized to conduct business in the state of Texas.

### Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The objective of Section 112(r) is to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

6. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), mandates that the Administrator establish a threshold quantity for any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The list of regulated

substances and respective threshold quantities is codified at 40 C.F.R. § 68.130.

7. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for stationary sources with threshold quantities of regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68 – Chemical Accident Prevention Provisions, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

8. The regulations at 40 C.F.R. Part 68 require owners and operators to develop and implement a Risk Management Program at each stationary source with over a threshold quantity of regulated substances. The Risk Management Program must include, among other things, a hazard assessment, a prevention program, and an emergency response program. The Risk Management Program is described in a Risk Management Plan (RMP) that must be submitted to the EPA.

9. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source subject to 40 C.F.R. Part 68 no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

10. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68 apply to each program level of covered processes. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and if it is in a specified North American Industrial Classification System code or is subject to the Occupation Safety and Health Administration (OSHA) process safety management standard, 29



C.F.R. § 1910.119.

11. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$51,796 for violations that occur after November 2, 2015, and are assessed after January 12, 2022.

#### Definitions

12. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any 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.

13. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and the regulation at 40 C.F.R. § 68.3 defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

14. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3 defines “stationary source,” in part, 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.

15. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

16. The regulation at 40 C.F.R. § 68.3 defines “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

17. The regulation at 40 C.F.R. § 68.3 defines “process” 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.

18. The regulation at 40 C.F.R. § 68.3 defines “covered process” as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

#### **EPA Findings of Fact and Conclusions of Law**

19. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

20. Respondent is the owner and operator of the facility that is located at: 12220 Strang Rd La Porte, Texas 77571 (“the Facility”).

21. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, the EPA conducted an

inspection of the Facility from January 16, 2020 – January 17, 2020, to determine Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 (“the Inspection”).

22. On February 24, 2022, the EPA sent Respondent a Notice of Potential Violation and Opportunity to Confer letter. On May 4, 2022, the EPA responded to the documentation and information received from Respondent as a result of the opportunity to confer and articulated the EPA’s position concerning Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

23. The Facility is a “stationary source” pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3.

24. At the Facility, the Respondent produces, processes, stores, or handles more than 10,000 pounds of ethylene and more than 15,000 pounds of vinyl acetate monomer (Acetic acid ethenyl ester).

25. Ethylene and vinyl acetate monomer are “regulated substances” pursuant to Section 112(r)(2)(B) of the CAA, and the regulation at 40 C.F.R. § 68.3. The threshold quantities for ethylene and vinyl acetate monomer, as listed in 40 C.F.R. § 68.130, are 10,000 pounds and 15,000 pounds, respectively.

26. Respondent has greater than a threshold quantity of ethylene and vinyl acetate monomer, in a process at the Facility, meeting the definition of “covered process” as defined by 40 C.F.R. § 68.3.

27. From the time Respondent first had on-site greater than a threshold quantity of ethylene and vinyl acetate monomer, in a process, Respondent was subject to the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68 because it was the

owner or operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

28. From the time Respondent first had on-site greater than a threshold quantity of ethylene and vinyl acetate monomer in a process, Respondent was required to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 prevention requirements because pursuant to 40 C.F.R. § 68.10(i), the covered process at the Facility did not meet the eligibility requirements of Program 1 and is in North American Industry Classification System code 325211 (Plastics Material and Resin Manufacturing) and is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

**EPA Findings of Violation**

29. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

30. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

**Count 1 – Mechanical Integrity**

31. The regulation at 40 C.F.R. § 68.73(d)(3) requires the owner or operator to ensure that the frequency of inspections and tests of process equipment are consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

32. The Respondent failed to ensure that the frequency of inspections and tests of process equipment are consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience. Respondent completed the external inspection for one tank outside the required



frequency.

33. Respondent's failure to perform the external inspection for the tank within the required frequency is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

**Count 2 – Emergency Response Program**

34. The regulation at 40 C.F.R. § 68.95(a)(1)(ii) requires the owner or operator to develop and implement an emergency response program for the purpose of protecting public health and the environment, pursuant to 40 C.F.R. § 68.95(a)(1)(ii).

35. Respondent's emergency response manual referenced but did not include safety data sheets documenting the first-aid or emergency medical treatment for the site's regulated substances.

36. Respondent's failure to document the first-aid or emergency medical treatment necessary for exposures in the emergency response plan is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

**CONSENT AGREEMENT**

37. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),  
Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the performance of the Supplemental Environmental Project (SEP) set forth herein;
- (e) consents to any conditions specified herein;
- (f) waives any right to contest the allegations set forth herein; and

(g) waives its rights to appeal the Final Order accompanying this Consent Agreement.

38. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

39. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

**Penalty Payment**

40. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of seventeen thousand, two hundred fifty-eight dollars (\$17,258), as set forth below.

41. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

42. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Lorena S. Vaughn  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500 (ORC)  
Dallas, Texas 75270-2102  
vaughn.lorena@epa.gov; and

Charese Simpson

Enforcement and Compliance Assurance Division  
Air Enforcement Branch  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500 (ECDAC)  
Dallas, Texas 75270-2101  
Simpson.Charese@epa.gov

43. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

**Supplemental Environmental Project**

44. Respondent shall implement a supplemental environmental project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvement. The SEP involves the purchase of electronic and other equipment to the Office of Emergency Management and Local Emergency Planning Committee ("LEPC" for the City of Laporte, Texas, located at 3001 N. 23<sup>rd</sup> Street, La Porte, Texas, 77571. The equipment to be purchased and Respondent's costs of performing the SEP are described in more detail in Attachment A to this CAFO. The equipment shall be purchased and in the possession of the LEPC no later than twelve (12) months from the effective date of this CAFO.

45. The SEP advances at least one of the objectives of 112(r) of the CAA, 42 U.S.C. §

7412(r), by allowing the LEPC to be better prepared and respond more effectively to incidents involving chemicals and other hazardous materials. The SEP is not inconsistent with any provision of 112(r) of the CAA, 42 U.S.C. § 7412(r). The SEP relates to the alleged violation(s) and is designed to reduce the adverse impact to public health and/or the environment to which the alleged violations contribute, as well as the overall risk to public health and/or the environment potentially affected by the alleged violations. Specifically, the upgraded technology in the SEP will replace aging computers, allow the LEPC team to relocate in the event of an emergency and more easily deploy in the field, and assist in offsite training of emergency management personnel, first responders, and industrial site representatives. Additionally, the HAZMAT radiological detection devices will be key equipment for the LEPC in responding to emergencies.

46. The Respondent is responsible for the satisfactory completion of the SEP described in the foregoing Paragraph 44 and Attachment A. The total expenditure for the SEP described in Paragraph 44 and Attachment A shall be no less than **Sixty-Four Thousand Seven Hundred and Nineteen Dollars (\$64,719)**. The Respondent hereby certifies that the approximate cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate, and that the Respondent in good faith estimates that the cost to implement the SEP is \$64,719. The Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

47. The Respondent hereby certifies that as of the date of this CAFO, the Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is the Respondent required to perform or develop the SEP by any other agreement, grant, or as injunctive relief in this or any other case. The Respondent further certifies that the SEP is not a

project that the Respondent was planning or intending to construct, perform, or implement other than in settlement of this action. Finally, the Respondent certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for this SEP, and that the Respondent will not receive reimbursement for any portion of the SEP from another person or entity.

48. The Respondent also certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 44 and Attachment A.

49. Any public statement, oral or written, in print, film, or other media, made by the Respondent making reference to the SEP under this CAFO from the date of its execution of this CAFO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action against Mitsubishi Chemical America, Inc., taken on behalf of the EPA to enforce federal laws."

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

#### **SEP Completion Report**

51. The Respondent shall submit a SEP Completion Report to EPA within thirty (30) days after completion of the SEP under this CAFO. The SEP Completion Report shall contain the following information:

- A. A detailed description of the SEP as implemented;
- B. A description of any operating or logistical problems encountered and the solutions thereto;



- C. Itemized final costs with copies of receipts for all expenditures;
- D. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
- E. A description of the environmental, emergency preparedness, and/or public health benefits resulting from implementation of the SEP.

The Respondent agrees that failure to timely submit the final SEP Completion Report shall be deemed a violation of this CAFO subject to stipulated penalties pursuant to Paragraphs 56E.

52. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

53. The Respondent shall submit the following certification in the SEP Completion Report, signed by a responsible corporate official:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

54. After receipt of the SEP Completion Report described in Paragraph 51 above, EPA will notify the Respondent, in writing: (a) regarding any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any

deficiencies; or (b) to indicate that EPA concludes that the SEP has been completed satisfactorily; or (c) to determine that the SEP has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraphs 56-60 below.

55. If EPA elects to exercise option (a) in Paragraph 54 above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, then EPA shall permit the Respondent the opportunity to object in writing to the notification of deficiency given pursuant to Paragraph 54 within fifteen (15) days of receipt of such notification. EPA and the Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon the Respondent. The Respondent agrees to comply with any requirements imposed by EPA necessary to comply with the terms of this CAFO. In the event the SEP is not completed as reasonably contemplated herein, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraphs 56-60 herein.

**Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-On Amount**

56. In the event that the Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in Paragraph 44 and Attachment A of this CAFO and/or to the extent that the actual expenditures for the SEP does not equal or exceed the cost of the SEP described in Paragraph 46 above, the Respondent shall be liable for stipulated penalties according to the provisions set forth below:

A. Except as provided in subparagraph (B) immediately below, if the SEP has not been

satisfactorily completed within 12 months of the Effective Date of the CAFO and Respondent has not made good faith and timely efforts to complete the project satisfactorily, pursuant to this CAFO, the Respondent shall pay a stipulated penalty to the United States in the amount of \$64,719. Payment by Respondent of the stipulated penalty pursuant to Paragraph 56A. shall constitute full performance of the SEP and shall excuse any other stipulated penalty arising under this CAFO.

B. If the SEP is not completed in accordance with Paragraph 44 and Attachment A, but EPA determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, the Respondent shall not be liable for any stipulated penalty.

C. If the SEP is completed in accordance with Paragraph 44 and Attachment A, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, the Respondent shall pay a stipulated penalty, along with accrued interest, to the United States that shall reflect, dollar for dollar, the difference between the cost expended on the SEP and the agreed cost of \$64,719.

D. If the Respondent fails to timely complete the SEP (not including the SEP Completion Report) for any reason, the Respondent shall pay stipulated penalties as follows, and combined stipulated penalties for Paragraphs 56.D and 56.E shall not exceed \$64,719:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 500
16th through 30th day	\$ 1,000
31st day and beyond	\$ 2,500

E. For failure to submit the SEP Completion Report required by Paragraph 51 above, the Respondent shall pay a stipulated penalty in the amount of \$500 for each day after the report was originally due, until the report is submitted, and combined stipulated penalties for Paragraphs 56.D and 56.E shall not exceed \$64,719.

57. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole determination of EPA.

58. Stipulated penalties for Paragraphs 56.D and 56.E above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity and combined stipulated penalties for Paragraphs 56.D and 56.E shall not exceed \$64,719.

59. Respondent shall pay stipulated penalties not more than thirty (30) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraphs 41-42 herein.

60. The EPA may, in its unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

#### **Dispute Resolution**

61. If the Respondent objects to any decision or directive of EPA, the Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Chief, Chemical Accident Enforcement Section  
Compliance Assurance and Enforcement Division  
U.S. EPA - Region 6  
1201 Elm St, Suite 500  
Dallas, TX 75270-2101

Chief, RCRA & Toxics Enforcement Branch  
Office of Regional Counsel  
U.S. EPA - Region 6  
1201 Elm St., Suite 500  
Dallas, TX 75270-2101

62. The Chemical Accident Enforcement Section Chief (Chief) or his designee, and the Respondent shall then have an additional fifteen (15) calendar days from receipt by EPA of the Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Chief and the Respondent, the agreement shall be reduced to writing and signed by the Chief and the Respondent and incorporated by reference into this CAFO.

63. If no agreement is reached between the Chief and the Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division (Division Director) or his designee. The Division Director and the Respondent shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this CAFO. If the Division Director and the Respondent are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the CAFO.

#### **Notification**

64. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law



or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA: Charese Simpson  
Enforcement and Compliance Assurance Division  
Air Enforcement Branch  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500 (ECDAC)  
Dallas, Texas 75270-2101  
[Simpson.Charese@epa.gov](mailto:Simpson.Charese@epa.gov)

Respondent: Shawn Roussel  
Mitsubishi Chemical America, Inc., La Porte, Texas Plant  
HS&E Manager  
12220 Strang Road  
La Porte, Texas 77571  
[Shawn.roussel@m-chem.com](mailto:Shawn.roussel@m-chem.com)

Laura Burnett  
Mitsubishi Chemical America, Inc., La Porte, Texas Plant  
Lead Environmental Engineer  
12220 Strang Road  
La Porte, Texas 77571  
[Laura.Burnett@m-chem.com](mailto:Laura.Burnett@m-chem.com)

#### **Modification**

65. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of EPA and Respondent, and such modification or amendment being filed with the Regional Hearing Clerk.

#### **Termination**

66. At such time as Respondent believes that it has complied with all terms and conditions of this CAFO, Respondent may request that EPA advise whether this CAFO has been satisfied and terminated. EPA will respond to said request as expeditiously as possible. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed,

and Respondent has been notified by the EPA in writing that this CAFO has been satisfied and terminated.

**No EPA Liability**

67. Neither EPA nor the United States Government shall be liable for any injuries or damages to persons or property resulting from acts or omissions of the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns or contractors in carrying out activities pursuant to this CAFO, nor shall the EPA or the United States Government be held out as a party to any contract entered into by the Respondent in carrying out activities pursuant to this CAFO.

**Effect of Settlement and Reservation of Rights**

68. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein.

69. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

70. Respondent certifies by the signing of this Consent Agreement that it is to the best of its knowledge presently in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

71. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

72. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

**General Provisions**

73. By signing this Consent Agreement, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

74. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

75. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

76. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

77. 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: [Carter.courtney@epa.gov](mailto:Carter.courtney@epa.gov)

To Respondent: [shawn.roussel@m-chem.com](mailto:shawn.roussel@m-chem.com)

**RESPONDENT:**  
**MITSUBISHI CHEMICAL AMERICA, INC.**

Date: 11/7/22

Shawn Rousse  
Signature

Shawn Rousse  
Print Name

EHS MANAGER  
Title

**COMPLAINANT:**  
**U.S. ENVIRONMENTAL PROTECTION AGENCY**

Cheryl T. Seager

Digitally signed by CHERYL  
SEAGER  
Date: 2022.11.08 14:42:02  
-06'00'

Cheryl T. Seager  
Director  
Enforcement and  
Compliance Assurance 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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

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.

IT IS SO ORDERED.

THOMAS  
RUCKI

Digitally signed by THOMAS RUCKI  
DN: cn=US, o=U.S. Government,  
ou=Environmental Protection Agency,  
cn=THOMAS RUCKI,  
0.9.2342.19200300.100.1.1+68001003655804  
Date: 2022.11.09 12:32:04 -0500

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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, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Carter.courtney@epa.gov

Copy via Email to Respondent:

Shawn.roussel@m-chem.com

Shawn Roussel  
Mitsubishi Chemical America, Inc., La Porte, Texas Plant  
HS&E Manager  
12220 Strang Road  
La Porte, Texas 77571

Copy via Email to Regional Hearing Clerk:

Vaughn.lorena@epa.gov

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**LORI JACKSON**

Digitally signed by LORI JACKSON  
DN: c=US, o=U.S. Government, ou=Environmental  
Protection Agency, cn=LORI JACKSON,  
0.9.2342.19200300.100.1.1=68001003655539  
Date: 2022.11.09 14:43:50 -0600'

United States Environmental Protection Agency,  
Region 6

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 6  
 1201 Elm Street, Suite 500  
 Dallas, Texas 75270

In the Matter of

Mitsubishi Chemical America, Inc.

Respondent.

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§  
§  
§  
§  
§

Docket No. CAA-06-2022-3347

ATTACHMENT A

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

Title	Electronic and Other Equipment Donation
Location	City of LaPorte Local Emergency Planning Committee 3001 N. 23rd Street La Porte, Texas, 77571
Description	<p>Mitsubishi Chemical America, Inc. ("MCA") will donate electronic and other equipment to the Office of Emergency Management and Local Emergency Planning Committee ("LEPC") for the City of LaPorte, Texas. The donated equipment will allow the LEPC to be better prepared and respond more effectively to incidents involving chemicals and other hazardous materials. The area covered by the LEPC is the same area where MCA's La Porte facility is located.</p> <p>The donation will include:</p> <ul style="list-style-type: none"> <li>• Upgraded technology for the La Porte Emergency Operations Center ("EOC"):             <ul style="list-style-type: none"> <li>○ Twenty (20) laptops, at an estimated cost of \$2,000 each (\$40,000);</li> <li>○ Twenty (20) dock stations, at an estimated cost of \$300 each (\$6,000); and</li> <li>○ Forty (40) computer monitors, at an estimated cost of \$150 each (\$6,000).</li> </ul> </li> <li>• Key HAZMAT radiological detection devices and emergency response equipment:</li> </ul>

	<ul style="list-style-type: none"> <li>o One (1) identiFINDER R425-GN Standard R425, at an estimated cost of \$14,000; and</li> <li>o One (1) LUDLUM Model 3001-3RK2 Emergency Response Kit, at an estimated cost of \$3,000.</li> </ul>
SEP Category	Emergency Planning and Preparedness
Timeline	Within twelve months of CAFO Effective Date
Estimated Value	No less than \$64,719

Compliance with EPA SEPs Policy: The technology and equipment donation project is eligible for recognition by EPA Region 6 as a SEP for the purpose of mitigating the proposed civil penalty in this matter. The following demonstrates how the technology and equipment donation project satisfies the requirements of the EPA SEPs Policy:

- A. Section V.G of EPA’s SEPs Policy provides for emergency planning and preparedness project provides assistance, such as computers and software, communication systems, chemical emission detection and inactivation equipment, HAZMAT equipment, or training, to a responsible state or local emergency response or planning Entity as a category of project which may qualify as a SEP. This project satisfies the requirements of Section V.G of EPA’s SEPs Policy.
- B. The LEPC operates from the EOC. The upgraded technology for the EOC will replace aging computers, allow the LEPC team to relocate in the event of an emergency and more easily deploy in the field, and assist in offsite training of emergency management personnel, first responders, and industrial site representatives. The LEPC also hosts “E-Notify” training for industrial partners at the EOC on proper notification in the event of an incident, which benefits the community and the City of La Porte. The HAZMAT radiological detection devices will be key equipment for the LEPC in responding to emergencies. Specifically, the “identiFINDER” will assist firefighters with surveying, emergency response, and environmental monitoring. The “LUDLUM” kit contains key response equipment that will benefit the LEPC during an emergency.
- C. The SEP will be undertaken in connection with the settlement of an EPA enforcement action, Docket No. CAA-06-2022-3347.
- D. MCA is not otherwise required to donate the electronic and other equipment by any federal, state, or local law or regulation, nor pursuant to any agreement or grant, not as injunctive relief awarded in any other action in any forum.
- E. The electronic and other equipment donation pursuant to this SEP is not a project MCA had planned or committed to perform prior to the initiation of the enforcement action by EPA, which will be resolved in the CAFO.
- F. MCA has not received, and is not negotiating to receive, credit for the proposed gas detector SEP in any other enforcement action.
- G. MCA will not receive any reimbursement for any portion of the eligible SEP costs.