

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:

ITW Polymers Sealants North America Inc.
56 Air Station Industrial Park
Rockland, Massachusetts 02370,

Respondent.

Proceeding under Section 113(d) of the
Clean Air Act

Docket No. CAA-01-2021-0029

**CONSENT AGREEMENT AND
FINAL ORDER**

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. The issuance of this Consent Agreement and Final Order (“CAFO”), in accordance with 40 C.F.R. § 22.13(b), simultaneously commences and concludes an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as codified at 40 C.F.R. Part 22.

2. Complainant is the United States Environmental Protection Agency (“EPA”), Region 1.

3. Respondent is ITW Polymers Sealants North America Inc. (“ITW”), a Texas corporation doing business in Massachusetts.

4. Complainant and Respondent (together, the “Parties”), having agreed that settlement of this action is in the public interest, consent to the entry of this CAFO without adjudication of any issues of law or fact herein. Respondent agrees to comply with the CAFO’s terms and conditions set out below.

B. JURISDICTION

5. This CAFO is issued under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules at 40 C.F.R. Part 22.

6. EPA and the United States Department of Justice have jointly determined that this matter is appropriate for administrative penalty action in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

C. GOVERNING LAW AND REGULATIONS

7. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), entitled “Prevention of Chemical Releases,” contains a provision known as the CAA’s General Duty Clause (“General Duty Clause” or “GDC”). The General Duty Clause provides, in pertinent part, as follows:

The owners and operators of stationary sources producing, processing, handling or storing [any extremely hazardous] substances have a general duty in the same manner and to the same extent as [29 U.S.C. § 654] to identify hazards which may result from such releases [of extremely hazardous substances] using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

See Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

8. “Extremely hazardous substances” under the General Duty Clause include chemical substances that may, as a result of short-term exposures associated with releases to the air, cause death, injury, or property damage due to the chemicals’ toxicity, reactivity, flammability, or corrosivity. *See* Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Senate Report No. 228, 101st Congress, 1st Session 211 (1989). Pursuant to Section 112(r)(1) of the CAA, “extremely hazardous substances” include, but are not limited to, substances listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and 40 C.F.R. § 68.130.

9. Separately, Section 112(r) of the CAA authorizes EPA to promulgate regulations to prevent and minimize the consequences of accidental releases of certain regulated substances. *See* Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). EPA’s regulations, which contain risk management plan (“RMP”) and program requirements, are set out at 40 C.F.R. Part 68 and are generally known as the “RMP Rules.”

10. Under the RMP Rules, the owner or operator of a stationary source that has more than a threshold quantity of a “regulated substance” in a “process” must comply with one of three sets of RMP program requirements, differing in complexity depending on risks, that are designated as Program 1, Program 2, or Program 3 requirements. *See* 40 C.F.R. § 68.10.

11. “Regulated substances” under the RMP Rules are listed at 40 C.F.R. § 68.130.

12. A “process” under the RMP Rules is defined as any activity involving a regulated substance, including any use, storage, manufacturing, handling, or on-site movement of such substances, or any combination of these activities. A “covered process” is defined as any process that has a regulated substance present in greater than a threshold quantity. *See* 40 C.F.R. § 68.3.

13. The owner or operator of a stationary source with a covered process subject to the Program 3 requirements of the RMP Rules must, among other things, comply with the Program 3 accident prevention provisions set out at 40 C.F.R. §§ 68.65–68.87. These RMP Program 3 provisions include requirements for process safety information, process hazard analysis, operating procedures, mechanical integrity, and training.

14. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), authorize EPA to assess civil penalties for violations of the CAA and regulations promulgated thereunder, including CAA Section 112(r) and the RMP Rules. Pursuant to Section 113(d)(1) of the CAA, the Debt Collection Improvement Act of 1996 (as amended in 2015 by Section 701 of Pub. L. 114–74, 31 U.S.C. § 3701), and EPA regulations set out at 40 C.F.R. Part 19, EPA currently may assess penalties of up to \$37,500 per day for each violation of CAA regulations occurring on or before November 2, 2015, and penalties of up to \$48,762 per day for each violation occurring after November 2, 2015.

D. BACKGROUND FACTS

15. Respondent ITW owns and operates an adhesive and sealant manufacturing facility at 56 Air Station Industrial Park in Rockland, Massachusetts (“Facility”). The Facility, which employs about 30 persons, is one of several plants that Respondent operates nationwide. Respondent is a wholly-owned subsidiary of Illinois Tool Works, Inc., a publicly-traded Delaware corporation with about 45,000 employees worldwide.

16. In the Facility’s manufacturing processes, ITW uses various highly flammable and/or toxic chemicals that are stored in outdoor tanks ranging in size from about 5,000 to 10,000 gallons each. The Facility is located in a commercial/light industrial area of Rockland, within one-half mile of numerous businesses, a children’s swim school, a church, a delicatessen, and residential homes.

17. ITW is a corporation and is thus a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

18. The Facility is a “stationary source” from which an “accidental release” could occur, as those terms are defined at Sections 112(r)(2)(C) and (2)(A) of the CAA and at 40 C.F.R. § 68.3, respectively.

19. On May 22, 2018, EPA Region 1 inspectors conducted a CAA Section 112(r) compliance evaluation inspection at the Facility. On January 29, 2019, EPA Region 1 issued to ITW a Notice of Potential Violation letter regarding potential GDC and RMP Rules violations at the Facility.

E. ALLEGED GDC VIOLATIONS

20. At the Facility, ITW handles and stores toluene, methyl acetate, acetone, mineral spirits, methyl ethyl ketone, methylene chloride, and methylene diphenyl diisocyanate (“MDI”). Because of flammability and/or toxicity, these chemicals are “extremely hazardous substances” under the General Duty Clause.

21. At the Facility, ITW stores the above-described GDC chemicals in outdoor horizontal and vertical storage tanks (“GDC storage tanks”) ranging in size from about 5,000 to 10,000 gallons. GDC chemicals are transported through piping from the GDC storage tanks to other parts of the Facility.

22. ITW’s GDC storage tanks and associated piping are subject to the General Duty Clause.

Count 1: Failure to Design/Maintain a Safe Facility

23. Under the General Duty Clause, owners and operators of stationary sources producing, processing, handling or storing extremely hazardous substances have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654 [from the Occupational Safety and Health Act] to design and maintain a safe facility taking such steps as are necessary to prevent accidental releases of such substances. *See* Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

24. The standard of care for designing and maintaining a safe facility is to base design considerations upon applicable design codes, federal and state regulations, and recognized industry practices; to prevent chemical releases or minimize their impacts; and to develop and implement standard operating procedures, preventative maintenance programs, personnel training programs, management of change practices, incident investigation procedures, and self-auditing procedures. Examples of design codes and recognized industry practices applicable to ITW’s industry include, for example, codes and guidelines issued by the National Fire Protection Association (“NFPA”), the Steel Tank Institute/Steel Plate Fabricator’s Association (“STI”), the American Petroleum Institute (“API”), and the American Society of Mechanical Engineers (“ASME”) (collectively hereinafter referred to as “Industry Standards”). *See also* EPA’s Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1) (May 2000) (“EPA’s General Duty Clause Guidance”). EPA consults these Industry Standards to understand the hazards posed by the use of various extremely hazardous substances and the standard of care that industries themselves have found to be appropriate for managing those hazards.

25. Failure to Conduct Tank Testing and Maintenance. At the time of EPA's inspection of the Facility in May 2018, none of ITW's outdoor GDC storage tanks had been properly evaluated to determine their fitness for ongoing use. *See, e.g.,* STI's Aboveground Storage Tanks Inspection Standard, commonly cited as "STI SP001," which in Table 5.5 recommends professional inspections for Category 2 storage tanks every 10 years. ITW's Category 2 GDC storage tanks had not been inspected since 2006, even though at the time of EPA's inspection there was evident surface corrosion on tank nozzles, manways, and shell surfaces.

26. Further, the 9,000-gallon vertical GDC storage Tank #19 containing MDI, together with two other 9,000-gallon tanks, had been moved from another ITW location in Michigan but there were no records of tank testing performed for any of these tanks when they were re-installed and put into service at the Facility. *See, e.g.,* the NFPA 30 Flammable and Combustible Liquids Code (commonly cited as "NFPA 30") at Sections 21.5.1 and 21.5.2.4, which provide that all tanks must be tested before being placed into service and that vertical tanks must be tightness tested.

27. Failure to Anchor Tanks. Industry Standards, such as API Standard 650: Welded Steel Tanks for Oil Storage (commonly cited as "API 650"), provide for anchoring tanks. At the time of EPA's inspection, vertical methyl acetate Tank #13 showed significant corrosion around the base and was not anchored to its concrete pad, despite a consultant's wind load analysis and recommendations in 2006 and 2011. Vertical mineral spirits Tank #14 was similarly not anchored to its concrete pad.

28. Failure to Conduct Pipe Testing. At the time of EPA's inspection, piping from the outdoor GDC storage tanks to Facility buildings had not been assessed with ultrasonic testing ("UT testing"). UT testing performed after EPA's inspection indicated significant pipe thinning in many of the GDC tank pipe runs. *See, e.g.,* API Standard 570: Piping Inspection Code (commonly cited as "API 570") at Section 6 and Table 6-1, and API Recommended Practice 574: Inspection Practices for Piping System Components (commonly cited as "API 574") at Sections 12.1 and 12.4, recommending that UT inspections generally be conducted not less than every 10 years with records kept of UT test locations and readings.

29. Failure to Label Pipes and Connection Ports. At the time of EPA's inspection, piping from the outdoor GDC storage tanks to Facility buildings was not labeled to identify the pipes' contents, physical state, or direction of flow, and insulated piping from the MDI tank was not labeled for contents or direction of flow. Also, chemical hose connection ports (i.e., chemical fill ports) mounted on the exterior wall of the Facility's adhesive manufacturing building were unlabeled, so there was no indication of which chemical was to be pumped into each fill port. *See, e.g.,* pipe labeling standards in ASME Standard A13.1: Scheme for the Identification of Piping Systems (commonly cited as "ASME A13.1") at Section 3.1.

30. Failure to Perform Pipe Maintenance. Chemical transfer piping from hose connections to the outdoor GDC storage tanks were unpainted and had surface corrosion. *See,*

e.g., NFPA 30 at Section 27.6.4, which recommends that above-ground piping subject to corrosion be suitably protected.

31. As alleged above in this Count and as set forth in EPA's January 29, 2019 Notice of Potential Violation letter, for which all items discussed therein are incorporated in this CAFO by reference, ITW failed to conduct GDC tank testing, anchor GDC tanks, conduct GDC pipe testing, label GDC pipes and connection ports, and perform GDC pipe maintenance. Such failures could have led to a chemical release and caused serious harm.

32. Accordingly, ITW failed to design and maintain a safe facility and violated the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 2: Failure to Minimize Consequences of Accidental Releases

33. Under the General Duty Clause, owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances have a general duty, to the same extent as 29 U.S.C. § 654, to minimize the consequences of accidental releases. *See* Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

34. Industry Standards for minimizing the consequences of an accidental release include, for example, minimizing tank overflows, maintaining secondary containment, controlling leaks, and labeling pipes. In addition, industry standards of care call for emergency response planning at facilities that have extremely hazardous substances. Emergency response planning includes, among other things, providing a Local Emergency Planning Committee with information needed to complete a Comprehensive Emergency Response Plan under 42 U.S.C. § 11003, coordinating with response agencies, conducting employee emergency response training, and conducting exercises.

35. Failure to Install Tank Overflow Controls. GDC storage Tanks #5 and #13 (5,000 and 10,000 gallons, respectively) did not have required tank overfill devices and were judged not fit for service in January 2019 tank test reports produced by an ITW consultant. The overfill controls were installed in mid-2020. *See, e.g.*, NFPA 30 at Section 21.7, containing overfill prevention requirements for aboveground tanks larger than 1,320 gallons, and 40 C.F.R. § 112.8(c)(8), requiring overfill devices/systems for oil-containing storage tanks (including mineral spirits).

36. Failure to Maintain Tank Secondary Containment. At the time of EPA's inspection, the concrete secondary containment of the outdoor GDC chemical storage tanks was chipped and broken, and the epoxy coating appeared significantly deteriorated in many locations, all of which may have adversely impacted the containment and caused it to be non-watertight. *See, e.g.*, NFPA 30 at Section 22.11.2.4, which provides that concrete or solid masonry containment walls must be designed to be liquid-tight even when fully loaded. ITW performed a substantial amount of secondary containment repair work after EPA's inspection.

37. Failure to Control Leaks. A MDI pump in secondary containment for MDI-containing GDC storage Tank #19 was leaking during EPA's May 2018 inspection. Absorbant towels had been placed under the leaking pump, but there were wet areas near the towels and on the floor beneath the pump. This was an unsafe situation because MDI is flammable and dangerous if inhaled. *See, e.g.,* NFPA 30 at Sections 6.9.2 and 18.3.2, which provide that facilities control leakage and prevent spillage of flammable liquids. ITW replaced the pump in July 2018.

38. Failure to Label Pipes and Connection Ports. Piping from the outdoor GDC storage tanks to Facility buildings was not labeled to identify the pipes' contents, physical state or direction of flow. Insulated piping from the MDI tank was not labeled for contents or direction of flow. Also, chemical hose connection ports (i.e., chemical fill ports) mounted on the exterior wall of the Facility's adhesive manufacturing building were unlabeled, so there was no indication of which chemical should be pumped into each fill port. *See, e.g.,* ASME 13.1 at Section 3.1.

39. As alleged above in this Count and as set forth in EPA's January 29, 2019 Notice of Potential Violation letter, for which all items discussed therein are incorporated in this CAFO by reference, ITW failed to install tank overflow controls, failed to properly maintain tank secondary containment structures, failed to properly control a spill from a leaking MDI pump, and failed to label pipes and connection ports. Such failures threatened to exacerbate the effects of any release of GDC chemicals that might occur.

40. Accordingly, ITW failed to minimize the consequences of accidental releases and violated the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

F. ALLEGED RMP VIOLATIONS

41. At the Facility, ITW stores and uses dimethyl ether, propane/isobutane, and isopentane, which are all listed regulated substances under the RMP Rules (hereinafter, the "RMP regulated substances" or "RMP chemicals"). ITW stores the RMP regulated substances in three outdoor pressurized storage tanks (the "RMP storage tanks") ranging in size from about 6,000 to 9,000 gallons.

42. ITW transports the RMP regulated substances via piping from the RMP storage tanks to other parts of the Facility, including the Facility's Gas House, where ITW uses the RMP regulated substances in its adhesive manufacturing processes.

43. The Facility's RMP storage tanks and associated piping, and ITW's manufacturing processes and associated equipment that use the RMP regulated substances, constitute "covered processes" at the Facility under the RMP Rules. As set out in ITW's RMP plan, these covered processes are subject to RMP Program 3 requirements.

Count 3: Failure to Comply with Process Safety Information Requirements

44. Pursuant to 40 C.F.R. § 68.65, as the owner or operator of one or more RMP Program 3 processes at the Facility, ITW must compile written process safety information (“PSI”) before completing any process safety analysis. *See* 40 C.F.R. § 68.65(a). Further, ITW must document and ensure that its process equipment complies with recognized and generally accepted good engineering practices (“RAGAGEP”). *See* 40 C.F.R. § 68.65(d)(2).

45. At the time of EPA’s Inspection, ITW had not adequately documented and ensured that its process equipment complied with RAGAGEP.

46. Among other things, ITW failed to label piping carrying RMP chemicals from the Facility’s three outdoor RMP storage tanks to the Facility’s Gas House with labels identifying contents, physical state or direction of flow, as provided by ASME A13.1 at Section 3.1. Separately, a pressurized vessel in the Facility’s reactor room containing RMP chemicals had no nameplate stating its maximum allowable working pressure and date of installation, as provided in the ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, as referenced by NFPA 58: Liquefied Petroleum Gas Code (commonly cited as “NFPA 58”) at Section 5.2.1.1.

47. Accordingly, ITW failed to comply with the PSI requirements of the RMP Rules and violated 40 C.F.R. § 68.65.

Count 4: Failure to Perform an Adequate Process Hazard Analysis

48. Pursuant to 40 C.F.R. § 68.67(a), ITW must perform an initial process hazard analysis (“PHA”) on each covered process at the Facility. The PHA must identify, evaluate, and control the hazards involved in the process. ITW must update the PHA at least once every five years. 40 C.F.R. § 68.67(a). Additionally, ITW must establish a system to promptly address the recommendations identified in the PHA, including documentation of how the recommendations are addressed and resolved. 40 C.F.R. § 68.67(e).

49. At the time of EPA’s inspection, ITW’s PHA did not adequately identify, evaluate, or control process hazards. Among the PHA’s deficiencies were the following: the PHA contained a list of general chemical release scenarios with no specific engineering and administrative controls applicable to the hazards; the PHA contained no qualitative evaluation of possible safety or health effects that could arise from the failure of controls; and the PHA contained no system to address any recommendations or document their resolution.

50. Accordingly, ITW failed to comply with the PHA requirements of the RMP Rules and violated 40 C.F.R. § 68.67.

Count 5: Failure to Comply with Operating Procedures Requirements

51. Pursuant to 40 C.F.R. § 68.69, ITW is required to develop and implement written operating procedures that provide instructions or steps for safely conducting activities associated with its RMP covered processes, consistent with the Facility's PSI. These operating procedures must address steps for each operating phase, operating limits (including steps required to correct or avoid deviations), safety and health considerations, and safety systems. ITW must make these procedures available to employees involved in the process, keep them up to date with current practices, and certify annually that they are current. ITW must also develop and implement safe work practices to control hazards during specific operations.

52. At the time of EPA's inspection, ITW did not ensure that operating procedures for the Facility's covered processes were kept up to date and certified. ITW's operating procedures for receiving and unloading propane/isobutane were undated and contained no information regarding updates or regular certifications, and no remedial steps if deviations occurred.

53. Accordingly, ITW failed to comply with RMP operating procedures requirements and violated 40 C.F.R. § 68.69.

Count 6: Failure to Comply with Mechanical Integrity Requirements

54. Pursuant to 40 C.F.R. § 68.73, ITW must establish and implement written procedures to maintain the ongoing integrity of certain process equipment such as pressure vessels, storage tanks, piping systems, and relief and vent devices. Inspections and testing procedures shall follow RAGAGEP, and the frequency of inspections and tests shall be consistent with manufacturer's recommendations and good engineering practices. ITW must also document the inspections or tests on process equipment and correct any deficiencies.

55. ITW failed to perform necessary inspections and testing of equipment used in its RMP-covered processes at the Facility. Among other things, ITW failed to timely conduct internal inspections of the Facility's three outdoor, pressurized RMP storage tanks. At the time of EPA's inspection, the RMP tanks had been in service at the Facility since 2003 but had not been inspected. After EPA's inspection, ITW arranged for inspections of the RMP storage tanks, but these inspections did not include required internal tank inspections. *See* API 510: Pressure Vessel Inspection Code (commonly cited as "API 510") at Section 6.5.1.1, which provides that internal inspections of pressurized tanks shall be performed at no less than ten-year intervals. Further, ITW failed to regularly test or replace the RMP storage tanks' pressure relief valves ("PRVs"). *See* API 510 at Section 6.6.3.2; API 576: Inspection of Pressure-relieving Devices (commonly cited as "API 576") at Section 6.4.1; and NFPA 58 at Annex E, Section E.2.3.2.

56. In addition, ITW failed to timely conduct UT testing on pipes carrying RMP chemicals from the RMP storage tanks to the Facility's Gas House. *See* API 570 at Section 6

and Table 6-1, and API 574 at Sections 12.1 and 12.4, recommending that UT inspections generally be conducted not less than every 10 years with records kept of UT test locations and readings.

57. Accordingly, ITW failed to comply with RMP mechanical integrity requirements and violated 40 C.F.R. § 68.73.

Count 7: Failure to Comply with Training Requirements

58. Pursuant to 40 C.F.R. § 68.71, ITW must ensure that each employee involved in operating an RMP covered process receives initial training regarding the process and its operating procedures. In the alternative, ITW may certify in writing that the employee has the required knowledge and skills to safely operate the process. *See* 40 C.F.R. §§ 68.71(a) and (b).

59. ITW failed to provide initial training to new employees who were assigned to operate RMP covered processes in the Facility's Gas House, where RMP chemicals are used as bulk adhesive propellants. ITW also failed to certify in writing that these employees had the required knowledge and skills to safely operate these processes.

60. Accordingly, ITW failed to comply with RMP training requirements and violated 40 C.F.R. § 68.71.

G. CONSENT AGREEMENT TERMS

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

- (a) admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
- (b) neither admits nor denies the specific factual allegations contained in this CAFO;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to the conditions specified in this CAFO;
- (f) consents to any stated permit action;
- (g) waives any right to contest the alleged violations of law set forth in Sections E and F of this CAFO; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

62. For the purpose of this proceeding, Respondent further:

- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

- (c) waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1);
- (d) consents to personal jurisdiction in any action to enforce this CAFO in the United States District Court for the District of Massachusetts; and
- (e) waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

63. Respondent certifies that it has corrected the violations alleged in this CAFO, and is currently in compliance with the General Duty Clause and the RMP Rules, with the exception of the items that are set out in Appendix 1 of this CAFO. Respondent has agreed to correct these remaining deficiencies on the compliance schedules set out in Appendix 1. Respondent has further agreed to conduct an independent third-party compliance audit of the Facility as set out in Appendix 1.

64. **Penalty Payment:**

- (a) Pursuant to Sections 113(d)(2)(B) and (e) of the CAA, 42 U.S.C. §§ 7413(d)(2)(B) and (e), and taking into account the relevant statutory penalty criteria, the applicable penalty policy, and Respondent's cooperation in agreeing to perform the non-penalty conditions of this CAFO, EPA has determined that it is fair and proper to assess a civil penalty of \$345,000 for the violations alleged in this matter.
- (b) Respondent agrees to pay the civil penalty of \$345,000 within 30 days of the Effective Date of this CAFO.
- (c) Respondent agrees to make payment by submitting a bank, cashier's, or certified check in the amount of \$345,000, payable to the order of the "Treasurer, United States of America." The check shall be sent via express mail to the following address:

U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

In the alternative, Respondent may pay the penalty via electronic wire funds transfer using the following information:

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”

Respondent shall include the case name and docket number (“In the Matter of ITW Polymers Sealants North America Inc., Docket No. CAA-01-2021-0029”) on the face of the check or wire transfer confirmation. In addition, at the time of payment, Respondent shall simultaneously send a notice of the penalty payment and a copy of the check or wire transfer confirmation to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code 4-6
Boston, Massachusetts 02109-3912
santiago.wanda@epa.gov

and

Steven J. Viggiani
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code 4-3
Boston, Massachusetts 02109-3912
viggiani.steven@epa.gov

65. If Respondent fails to timely pay any portion of its civil penalty or any stipulated penalties assessed under this CAFO, EPA may request that the United States Department of Justice institute a civil collection action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review. In addition, EPA may also: (a) refer the debt to a credit reporting agency or a collection agency, pursuant to 42 U.S.C. § 7413(d)(5) and 40 C.F.R. §§ 13.13, 13.14, and 13.33; (b) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the

debt the person owes the federal government), including but limited to a referral to the Internal Revenue Service for offset against income tax refunds, pursuant to 40 C.F.R. Part 13, Subparts C and H; and (c) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, pursuant to 40 C.F.R. § 13.17.

66. **Non-Penalty Conditions.** As a condition of settlement under CAA Section 113(d)(2)(B), 42 U.S.C. § 7413(d)(2)(B), Respondent agrees to comply with the non-penalty provisions of Appendix 1, which is attached to this CAFO and incorporated herein by reference. Respondent shall comply with Appendix 1 beginning from the Effective Date of this CAFO.

- (a) Respondent shall be liable for stipulated penalties in the amount of \$1,000 for each day for the first through thirtieth day for each failure to perform any action required by Appendix 1, and \$2,000 for each day thereafter for each failure to perform such action.
- (b) Respondent shall pay stipulated penalties plus any interest due thereupon within fifteen (15) days of receipt of a written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 64(c) above. EPA may, in its sole discretion, elect not to seek stipulated penalties or to compromise any portion of stipulated penalties that accrue pursuant to this CAFO.

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

68. The Chief of EPA Region 1's Waste and Chemical Compliance Section shall have the authority to extend the deadlines in Appendix 1 for good cause, and the Parties shall endeavor to communicate informally before missing deadlines or demanding stipulated penalties.

69. **Notifications.** All notices and submissions required by this CAFO to be provided to Complainant or Respondent shall be sent via mail or email to the following:

For Complainant:

Steven J. Viggiani
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code 4-3
Boston, Massachusetts 02109-3912
viggiani.steven@epa.gov

For Respondent:

Thor W. Ketzback, Esq.
Counsel for ITW
Bryan Cave Leighton Paisner LLP
161 North Clark Street, Suite 4300
Chicago, Illinois 60601-3315
thor.ketzback@bclplaw.com

70. All documents submitted to Complainant in the course of implementing this CAFO shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2 Subpart B, and determined by Complainant to merit treatment as confidential business information in accordance with applicable law.

H. ADDITIONAL PROVISIONS

71. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of the Parties and the approval of the Regional Judicial Officer, except that the Regional Judicial Officer need not approve written agreements modifying schedules for the performance of the non-penalty conditions set out Appendix 1.

72. Respondent agrees that the time period from the Effective Date of this CAFO until all of the conditions and compliance measures specified in Appendix 1 are completed (the “Tolling Period”) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the “Tolled Claims”) set forth in Sections E and F of this CAFO. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

73. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this CAFO until the end of the Tolling Period, as set out in Paragraph 72 above, Respondent must give written notice and a copy of this CAFO to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to Complainant. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this CAFO unless Complainant has provided written approval of the release of said obligations or liabilities.

74. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.

75. By signing this CAFO, each undersigned representative of the Parties certifies that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party that he or she represents. The Parties consent to the use of digital signatures on this CAFO, and Respondent further consents to receipt of service of the CAFO, once filed, by electronic mail.

76. By signing this CAFO, the Parties agree that each party's obligations under this CAFO and EPA's compromise of statutory maximum penalties constitute sufficient consideration for the other party's obligations.

77. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

I. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

78. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in Sections E and F above.

79. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of the conditions in Appendix 1 is restitution or required to come into compliance with the law.

80. This CAFO constitutes the entire agreement and understanding of the Parties and supersedes any prior agreements or understandings, whether written or oral, among the Parties with respect to the subject matter hereof.

81. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties as provided in Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). EPA may use any information submitted by Respondent pursuant to this CAFO in an administrative, civil judicial, or criminal action.

82. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA and other federal, state, or local laws or statutes, and nothing in this CAFO shall restrict EPA's authority to seek compliance with any applicable laws or regulations, or be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

83. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

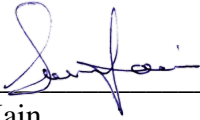
84. Except as qualified by Paragraph 65, each party shall bear its own costs and fees in this proceeding including attorney's fees. Respondent specifically waives any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

J. EFFECTIVE DATE

85. Respondent and Complainant agree to issuance of the attached Final Order. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk.

In the Matter of ITW Polymers Sealants North America Inc., Docket No. CAA-01-2021-0029
Consent Agreement and Final Order

FOR RESPONDENT:



Samir Jain
Vice President and General Manager
ITW Polymers Sealants North America Inc.

February 23, 2021

Date

In the Matter of ITW Polymers Sealants North America Inc., Docket No. CAA-01-2021-0029
Consent Agreement and Final Order

FOR COMPLAINANT:

James Chow, Deputy Director for Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 1

Date

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of EPA's Consolidated Rules and Sections 113(d)(1) and (d)(2)(B) of the CAA, 42 U.S.C. §§ 7413(d)(1) and (d)(2)(B), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

Respondent ITW is ORDERED to comply with all terms of the Consent Agreement, which shall become effective on the date it is filed with the Regional Hearing Clerk.

SO ORDERED:

Sharon Wells
Acting Regional Judicial Officer
U. S. EPA, Region 1

Date

APPENDIX 1: NON-PENALTY COMPLIANCE TERMS

A. Pipe Inspections and Compliance Measures

1. To correct the GDC pipe inspection violations cited in CAFO Paragraph 28, Respondent hired a new, qualified inspection consultant who conducted new inspections, with UT testing, of all of the GDC-subject pipe runs connecting the Facility's outdoor GDC storage tanks to Facility buildings. Respondent's consultant has provided Respondent with a GDC pipe inspection report (the "Solvent Piping Inspection Report," dated December 14, 2020), which includes photographs of the pipes and the results of the UT testing performed on the pipes. A copy of this inspection report has been provided to EPA.

2. The Solvent Piping Inspection Report contains various recommendations for repairs, maintenance, testing, and other corrective work involving the GDC pipe runs. Respondent certifies that it has addressed and resolved the report's recommendations for GDC piping corrective work with the exception of the following: (a) repair of the cracked pipe bridge support leg that services the low viscosity mixer supply piping; (b) preparation of areas adjacent to the low viscosity mixing building to accommodate effective drainage and vegetation control, and to maintain noncontact with soil or stone; and (c) preparation and re-coating of piping at low viscosity mixer building penetrations, and prevention of stormwater impact on these penetrations.

3. Respondent shall complete the remaining corrective work listed in Paragraph 2 above by no later than April 30, 2021. If inclement weather causes schedule delays for any of this work, Respondent shall inform EPA by email by no later than April 30th and shall complete all delayed work by no later than May 30, 2021.

B. Tank Inspections and Compliance Measures

4. To correct the RMP tank inspection violations cited in CAFO Paragraph 55, Respondent hired a new, qualified inspection consultant who conducted new inspections of the Facility's three RMP storage tanks. Respondent's consultant has provided Respondent with an inspection report for each of the RMP storage tanks (collectively, the "RMP Tank Inspection Reports," each dated October 15, 2020). Respondent's consultant also provided an inspection report for the RMP pipe runs (the "Process Piping Inspection Report," dated November 4, 2020). Copies of these inspection reports have been provided to EPA.

5. The RMP Tank Inspection Reports and the Process Piping Inspection Report contain various recommendations for repairs, maintenance, testing, and other corrective work involving the RMP storage tanks and the RMP pipe runs. Respondent certifies that it has addressed and resolved the reports' recommendations for RMP tank and piping corrective work with the exception of the following: (a) replacement of the RMP tanks' excess flow valves, and (b) testing of the RMP tanks' emergency shutoff valves.

6. Respondent shall complete the remaining corrective work listed in Paragraph 5 above by no later than April 30, 2021. Respondent shall also complete the re-sealing of exterior secondary containment walls for the Facility's RMP/GDC storage tanks, and shall replace the reactor vessel in the Facility's Gas House with a new, certified reactor vessel, by no later than April 30, 2021. If inclement weather causes schedule delays for any of this work, Respondent shall inform EPA by email by no later than April 30th and shall complete all delayed work by no later than May 30, 2021. Separately, Respondent shall complete all interior RMP/GDC pipe labeling by no later than April 30, 2021. In addition, Respondent shall incorporate the following into the Facility's mechanical integrity and preventative maintenance programs: (a) annual testing for tank emergency shutoff valves; (b) regular replacement (based on service life) of excess flow valves if the valves cannot be tested safely; (c) API 510 inspections of the RMP storage tanks at five-year intervals; and (d) formal external inspection of the RMP pipe runs at five-year intervals.

C. Independent Third-Party Compliance Audit

7. Respondent shall hire an independent third-party auditor to conduct a CAA Section 112(r) compliance audit at the Facility, produce a written audit report, and provide the report to Respondent and EPA. Respondent shall correct any CAA Section 112(r) compliance deficiencies found as a result of the audit.

8. The audit shall review and evaluate Respondent's compliance at the Facility with the RMP Rules' Program 3 requirements set out at 40 C.F.R. §§ 68.65–68.87, including requirements for process safety information, process hazard analysis, operating procedures, mechanical integrity, and training. The audit shall also review and evaluate Respondent's compliance at the Facility with the General Duty Clause in Section 112(r)(1) of the CAA, including whether the Facility is complying with current recognized and generally-accepted good engineering practices ("RAGAGEP") for any tanks and other equipment that store or transfer extremely hazardous chemicals.

9. Within 120 days after the effective date of this CAFO, Respondent shall hire a third-party auditor ("Auditor") that will use a team with at least two persons ("Team") to conduct the audit required by this Section. At or before the time of hiring, Respondent shall submit the Team members' resumes and qualifications to EPA. One or more members of the Team shall be generally knowledgeable regarding adhesive/sealant manufacturing or other operations that would have similar RMP and GDC requirements as practiced at the Facility, shall be knowledgeable with the requirements of 40 C.F.R. Part 68 and the GDC, and shall have at least five years of experience conducting Program 3 compliance audits and process hazard analyses. Prior to commencing the audit, the Team members shall become familiar with this CAFO and the alleged violations herein, and with RAGAGEP for the adhesive/sealant manufacturing industry.

10. Unless otherwise authorized in advance by EPA, the Auditor and Team members shall not have performed any work for Respondent or for any of Respondent's officers within the last three years, and shall not perform any such work for three years following submission of the final audit report. The Auditor and Team members shall receive no financial benefit from the outcome of the audit apart from payment for auditing services. Respondent's contract with the Auditor shall contain a statement documenting that the Auditor and Team members meet the independence requirements of this Paragraph.

11. At all times during the audit, Respondent shall provide the Team with unimpeded access to all documents and information related to the Facility's compliance with the CAA's GDC and the RMP Rules, including but not limited to the Facility's current process safety information, process hazard analysis, operating procedures, training materials and records, and mechanical integrity-related procedures, inspections, and testing, including all tank and piping inspections and testing and all documents related to repairs or corrective measures recommended, planned, and/or taken as a result of such inspections and testing.

12. The Team shall perform at least one on-site inspection of the Facility during the audit, and Respondent shall provide the Team with unimpeded access to the Facility during the inspection(s). The Team shall photograph or video its observations of the Facility's outdoor storage tanks and piping and equipment associated with these tanks, and the Facility's indoor RMP and GDC-subject processes and equipment, including any observed potential RMP/GDC noncompliance at any of these storage tanks, piping, processes, or equipment.

13. If, during the audit, the Team discovers a condition at the Facility that, in the Team's independent judgment, constitutes an imminent and substantial endangerment to human health or the environment, the Team shall immediately notify Respondent and EPA of the condition. Respondent shall immediately address and ameliorate the condition and immediately consult with EPA as to how best to eliminate it.

14. Within 180 days after the effective date of the CAFO, the Auditor shall complete the audit. Within 60 days after completing the audit, the Auditor shall provide a written final audit report ("Final Report") to Respondent and EPA. Two copies of the Final Report shall be provided to EPA. Respondent shall not review or comment on the Final Report, or any draft versions thereof, prior to the Final Report being provided to EPA.

15. The Final Report shall describe in detail the results of the audit, including, but not limited to, the following:

- (a) the Team's audit procedures, and the information reviewed and evaluated by the Team during the audit,
- (b) Respondent's current compliance obligations at the Facility with regard to the RMP Rules and the CAA GDC;

- (c) Respondent's current compliance status at the Facility with regard to the RMP Rules and the CAA GDC, including any current potential noncompliance with any RMP or GDC requirements;
- (d) any potential noncompliance identified by the Team or Respondent during the audit that was corrected prior to the issuance of the Final Report, including the date(s) on which the noncompliance commenced and was corrected;
- (e) recommendations for potential improvements or modifications to Respondent's CAA Section 112(r) compliance programs or operating procedures and practices at the Facility to ensure compliance; and
- (f) any other information relating to Respondent's CAA Section 112(r) compliance at the Facility that in the judgment of the Auditor merits review by Respondent or EPA.

16. The Final Report shall include a specific discussion of Respondent's CAA Section 112(r) compliance obligations, and compliance status, for all storage tanks and associated piping at the Facility that are subject to either the RMP Rules or the CAA GDC, including tank and piping inspections, testing and maintenance. The Final Report shall append a list of the Facility's RMP compliance documents (e.g., process safety information, process hazard analysis) and all tank and equipment inspection, testing and repair documents reviewed by the Team during the audit, with each such document identified by title, author and date. The Final Report shall also append a captioned log of photographs, and a copy of any videos, taken during the Team's on-site inspection(s) of the Facility.

17. Respondent shall address and fully correct as soon as possible any potential noncompliance identified in the Final Report. Within 30 days after receiving the Final Report, Respondent shall provide notice to EPA describing what actions Respondent has taken and/or will take to fully correct the noncompliance. If Respondent believes that any identified potential noncompliance in the Final Report does not constitute actual noncompliance, Respondent shall, as part of the written notice required in this Paragraph, provide to EPA a detailed explanation of Respondent's views. If requested by either party, EPA and Respondent shall meet within thirty (30) days after receipt of the Final Report to discuss the report and its findings.

18. Nothing in this Section or elsewhere in this CAFO shall be construed as an adoption of or an approval by EPA of any opinions, findings, conclusions, or other asserted facts or statements contained in the Final Report, or of any actions taken by Respondent in response to the Final Report. EPA fully reserves its rights, in accordance with the terms of this CAFO, to address any noncompliance discovered through the audit. The completion and submission of the Final Report shall not be construed as an admission, adoption, or approval by Respondent of any opinions, findings, conclusions, or other statements contained therein.