

ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
2017 JAN 12 PM 2:43  
REGIONAL HEARING CLERK  
EPA REGION VI

**IN THE MATTER OF:**

**Pryor Chemical Company,  
Pryor, Oklahoma**

**Respondent**

**CONSENT AGREEMENT AND FINAL  
ORDER**

**EPA DOCKET NO. CAA-06-2017-3321**

**CONSENT AGREEMENT AND FINAL ORDER**

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 ("EPA") ("Complainant"), and Pryor Chemical Company located in Pryor, Oklahoma ("Respondent" or "Pryor"), in the above referenced action, have agreed to simultaneously commence and resolve this matter, through issuance of this Consent Agreement and Final Order ("CAFO").

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act, as amended (CAA or the Act), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), 22.18(b)(3), and 22.34.
2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A).
3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO; however, Respondent neither admits nor denies the specific Findings of Fact and Conclusions of Law contained in this CAFO.
4. Respondent waives any right to contest the allegations in the CAFO and its right to appeal the Final Order set forth herein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Respondent does not waive any rights or defenses which have been raised or could be raised in any state law proceeding. This CAFO may not be used in any federal or state proceeding except proceedings by EPA to enforce this CAFO.
6. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil monetary penalties for the violations and facts alleged in the CAFO.
7. Respondent consents to the issuance of this CAFO, and consents to the assessment and payment of the stated federal civil monetary penalty in the amount and by the method set out in this CAFO.
8. Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this CAFO.
9. Nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, and criminal authorities, or that of other federal, state, or local agencies or departments to obtain penalties or injunctive relief under federal, state, or local laws or regulations, except for the specific violations released pursuant to this CAFO.
10. Respondent represents that the undersigned representative is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind the Respondent to the terms and conditions of this CAFO.
11. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

## **II. STATUTORY AND REGULATORY AUTHORITY**

12. Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), authorizes the Administrator to promulgate release prevention, detection, and correction requirements regarding regulated substances in order to prevent accidental releases of regulated substances. EPA promulgated the regulations at 40 C.F.R. Part 68 in order to implement Section 112(r)(7) of the Act. These regulations set forth the requirements of risk management programs that must be established and implemented at affected stationary sources. The regulations at 40 C.F.R. Part 68, Subparts A through G, require owners and operators of stationary sources to, among other things, develop and implement: (1) a management system to

oversee the implementation of the risk management program elements; and (2) a risk management program that includes, but is not limited to, a hazard assessment, a prevention program, and an emergency response program. Pursuant to 40 C.F.R. Part 68, Subparts A and G, the risk management program for a stationary source that is subject to these requirements is to be described in a risk management plan ("RMP") that must be submitted to EPA.

13. Sections 112(r)(3) and (5) of the Act, 42 U.S.C. §§ 7412(r)(3) and (5), require the Administrator to promulgate a list of regulated substances with threshold quantities. EPA promulgated a regulation known as the List Rule, at 40 C.F.R. Part 68, Subpart F, which implements Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), and which lists the regulated substances, including anhydrous ammonia, and their threshold quantities.
14. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. §7412(r)(7), and 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process shall comply with the requirements of 40 C.F.R. Part 68 (including, but not limited to, submission of an RMP to EPA), no later than June 21, 1999, or three years after the date on which such regulated substance is first listed under 40 C.F.R. § 68.130, or the date on which the regulated substance is first present in a process at a stationary source above the threshold quantity, whichever is latest.
15. The regulations at 40 C.F.R. Part 68 separate the covered processes into three categories, designated as "Program 1," "Program 2," and "Program 3," which contain specific requirements for owners and operators of stationary sources with processes that fall within the respective programs. A covered process is subject to Program 3 requirements, as per 40 C.F.R. § 68.10(d), if the process does not meet one or more of the Program 1 eligibility requirements set forth in 40 C.F.R. § 68.10(b), and is (a) listed in one of the specific North American Industry Classification System ("NAICS") codes found at 40 C.F.R. § 68.10(d)(1) or (b) is subject to the United States Occupational Safety and Health Administration ("OSHA") process safety management ("PSM") standard set forth in 29 C.F.R. § 1910.119.
16. 40 C.F.R. § 68.12(d) requires that the owner or operator of a stationary source with a Program 3 process undertake certain tasks, including, but not limited to, development and implementation of a management system (as provided in 40 C.F.R. § 68.15), the implementation of prevention program requirements, which include mechanical integrity (as provided in 40 C.F.R. §§ 68.65-68.87), the development and implementation of an emergency response program (pursuant to 40 C.F.R. §§ 68.90-68.95), and the submission

as part of the RMP data on prevention program elements for Program 3 processes (as provided in 40 C.F.R. § 68.175).

17. 40 C.F.R. § 68.190(a) requires that the owner or operator of a stationary source shall review and update the RMP as specified under 40 C.F.R. § 68.190(b) and submit it to EPA. 40 C.F.R. § 68.190(b)(1) requires that the owner or operator of a stationary source shall revise and update the RMP submitted under 40 C.F.R. § 68.150, within five years of its initial submission or most recent update required by 40 C.F.R. Section 68.190(b)(2) through (b)(7), whichever is later.
18. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3) authorizes EPA to issue orders for violations of the CAA, including violations of Section 112(r), 42 U.S.C. § 7412(r).
19. The authority to issue orders pursuant to Section 113(a)(3) of the CAA has been delegated to EPA Region 6's Regional Administrator, and has been re-delegated to EPA Region 6's Division Director of the Compliance Assurance and Enforcement Division.

### **III. DEFINITIONS**

20. Section 112(r)(2)(C) of the Act, 42 U.S.C. § 7412(r)(2)(C), and the regulations at 40 C.F.R. § 68.3 define "stationary source" as, *inter alia*, 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.
21. Section 112(r)(2)(A) of the Act, 42 U.S.C. § 7412(r)(2)(B), defines "accidental release" as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.
22. Section 112(r)(2)(B) of the Act, 42 U.S.C. § 7412(r)(2)(B), defines "regulated substance" as a substance listed pursuant to Section 112(r)(3) of the Act. The list of substances regulated under Section 112(r) of the Act is set forth at 40 C.F.R. § 68.130.
23. The regulations at 40 C.F.R. § 68.3 define "threshold quantity" as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Act, 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.

24. The regulations at 40 C.F.R. § 68.3 define “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. 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 are considered a single process.
25. The regulations at 40 C.F.R. § 68.3 define “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.
26. As used herein, the term “day” shall mean calendar day.
27. All terms not defined herein shall have their ordinary meanings.

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

28. Respondent is a corporation and authorized to do business in the State of Oklahoma.
29. Respondent is a “person” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).
30. At all times relevant to this CAFO, Respondent owned and operated a chemical manufacturing facility located at 4463 Hunt Street, Pryor, Oklahoma (“Facility”).
31. The Pryor Chemical Plant manufactures nitrogenous fertilizer. The facility processes natural gas to produce anhydrous ammonia. Anhydrous ammonia is the only regulated substance present at the facility. Anhydrous ammonia is used in the following processes or areas of the process: ammonia manufacturing, ammonia storage and loading, nitric acid (56%) manufacturing, nitric acid (56%) storage and urea manufacturing.
32. Respondent has fixed storage facilities to store up to 34,000,000 pounds of anhydrous ammonia.
33. Anhydrous ammonia is identified at 40 C.F.R. Part 68.130 as a toxic regulated substance with a threshold quantity of 10,000 pounds.
34. Respondent produces, processes, stores, or handles a regulated substance, anhydrous ammonia, in an amount over the threshold quantity of 10,000 pounds in the Ammonia Manufacture, Ammonia Storage and Load, and Urea process units.

35. Respondent's covered Urea Plant and associated anhydrous ammonia process is subject to the Chemical Accident Prevention Provisions requirements of Section 112(r)(7) of the CAA.
36. Respondent's covered anhydrous ammonia process is listed as one of the specific NAICS codes found at 40 C.F.R. § 68.10(d)(1) and is subject to the OSHA PSM requirements as set forth in 29 C.F.R. § 1920.119.
37. Three areas at Respondent's Facility are listed as covered processes subject to RMP Program 3 requirements, including: 1) anhydrous ammonia manufacture, 2) ammonia storage and load, and 3) urea processes including the loading racks.
38. The Program 3 requirements include, but are not limited to, the development and implementation of written operating procedures that provide clear instructions for safely conducting activities involved in each covered process.
39. Per 40 CFR 68.190(b)(1) Respondent was required to submit a revised risk management plan by June 30, 2014.
40. The Urea Plant is listed as a covered process in the RMP.
41. On January 22, 2016, a release of anhydrous ammonia occurred from the facility's Urea Plant.
42. Subsequent review by the Respondent revealed that a pressure relief valve on the Urea Plant Recovery Separator lifted during a plant startup and failed to reseat in a timely manner, resulting in an emergency shutdown of the plant. The valve had been compromised by hydraulic contact. The hydraulic contact resulted from a damaged block valve in the Recovery Separator level control line. After inspection of the damaged block valve it was determined that a stem in the valve had been over-torqued and damaged.
43. An estimate of 852 pounds of anhydrous ammonia were released during the incident.
44. No deaths, injuries, evacuations, or offsite impacts were caused by this release.
45. The failure by Respondent to properly install, test, and maintain the block valve in the recovery separator level control line was a violation of 40 C.F.R. Part 68. The hydraulic contact compromised the proper operation of the valve in both its premature release and failure to reseat properly.
46. Based on information available to EPA, the Facility and the Findings of Fact set forth above, EPA has determined that Respondent failed to comply with the requirements of 40 C.F.R. Part 68 and that Respondent's failures to comply with the requirements of 40

C.F.R. Part 68 described above constitute violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

**V. CIVIL PENALTY AND TERMS OF SETTLEMENT**

47. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), which authorizes EPA to assess a civil penalty of up to twenty-five thousand dollars (\$25,000) per day for each violation of the CAA.<sup>1</sup>
48. Upon consideration of the entire record herein and upon consideration of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, specific facts and equities, litigation risks, and other factors as justice may require, the parties agree that \$37,500 is an appropriate penalty to resolve this matter.
49. Within thirty (30) days of this fully executed CAFO, Respondent shall pay \$37,500 by cashier's check, certified check, or wire transfer made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of five (5) ways: regular U.S. Postal Service mail, to include certified mail; overnight mail; wire transfer; Automated Clearinghouse for receiving US currency; or On Line Payment. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

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

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties

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<sup>1</sup> The Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701 provides for increases in the statutory penalty provisions (\$25,000) cited in the Clean Air Act Stationary Source Civil Penalty Policy dated October 25, 1991 (CAA Penalty Policy). It provides for up to \$25,000 per day of violation for violations occurring on or before January 30, 1997; up to \$27,500 per day for each violation occurring after January 30, 1997 through March 15, 2004; up to \$32,500 per day for each violation occurring after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring after January 12, 2009.

*IN THE MATTER OF Pryor Chemical Company*  
*EPA DOCKET NUMBER CAA-06-2017-3321*

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

Contact: Natalie Pearson  
314-418-4087

For wire transfer, the payment should be remitted to:

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

Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact – Jesse White (301) 887-6548

For On Line Payment:

**WWW.PAY.GOV**  
Enter sfo 1.1 in search field  
Open form and complete required fields.

PLEASE  
NOTE:

The docket number CAA 06-2017-3321 shall be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following:



Enforcement Officer (6EN-AS)  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue Suite 1200  
Dallas, Texas 75202-2733

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

50. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.
51. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).
52. EPA will also assess a fifteen dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent? See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.
53. Pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis, a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorney's fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten (10)

percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

54. This CAFO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of any equipment or technology installed by the Respondent in connection with any additional settlement terms undertaken pursuant to this CAFO. Nothing in this CAFO shall be construed to prohibit or prevent the federal, state, or local government from developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required.
55. This document constitutes a "Final Order" as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of "prior such violations."

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

56. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal or state laws, regulations, statutes, or permitting programs.
57. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.
58. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, or regulated or other extremely hazardous substances at, on, or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, or criminal authorities, or that of other Federal, state, or local agencies or departments to obtain penalties or injunctive relief under Federal, state, or local laws, regulations, or subparts thereof.

#### **VII. COSTS**


59. Each party shall bear its own costs and attorney's fees.

*IN THE MATTER OF Pryor Chemical Company*  
*EPA DOCKET NUMBER CAA-06-2017-3321*

IT IS SO AGREED:

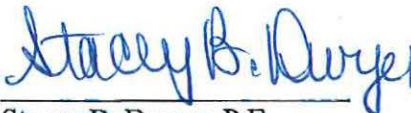
FOR THE RESPONDENT:

Date: 1-6-17

  
John M. Carver  
Vice President  
Safety & Environmental Compliance  
Pryor Chemical Company

For United States Environmental Protection Agency, Region 6:

Date: 01/09/2017

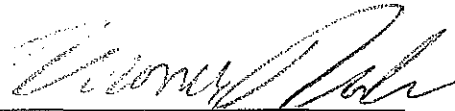
  
Stacey B. Dwyer, P.E.  
Acting Director  
Compliance Assurance and  
Enforcement Division

**FINAL ORDER**

Pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement, including the assessment of civil penalties. In accordance with 40 C.F.R. Part 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

11/12/17



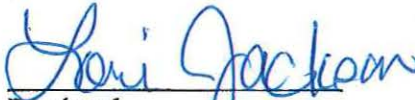
Thomas Rucki  
Regional Judicial Officer  
U.S. EPA, Region 6

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12 day of January, 2017, the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED and ELECTRONIC COPY**

Mr. Derek Hardberger, Esquire  
100 North Broadway  
Chase Tower, Suite 2900  
Oklahoma City, Oklahoma 73102  
dhardberger@hallestill.com

  
Paralegal  
U.S. EPA Region 6

DRAFT CAFO

Pryor Chemical Company  
CAA-06-2016-3375

2017-3321

*Steve Gilrein*

For Steve  
Gilrein

Signature

FOR CONCURRENCE ONLY

10/11/16

Date

Docket  
#  
updated  
to 2017