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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

Sekisui Specialty Chemicals America, LLC,

Respondent.

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Docket No. CAA-06-2021-3335

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 6 (EPA or Complainant), and Sekisui Specialty Chemicals America, LLC (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 (CAFO) 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 was therefore in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). Furthermore, this CAFO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.34, 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 Sekisui Specialty Chemicals America, LLC, a limited liability company created in the State of Delaware and conducting 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.

For Program 3 - 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 Occupational 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 \$48,192 for violations that occur after November 2, 2015, and are assessed after January 13, 2020.

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. The regulation at 40 C.F.R. § 68.3 defines “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 a facility located at: 1423 Highway 225, Pasadena, Texas, 77506 (the Facility).

21. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, the EPA conducted an inspection of the Facility on May 15 through 17, 2018, 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. 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.

23. Respondent has a plastics material and resin manufacturing plant that produces polyvinyl alcohol from vinyl acetate process at the Facility, meeting the definition of “process”, as defined by 40 C.F.R. § 68.3.

24. Vinyl acetate monomer is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The threshold quantity for vinyl acetate monomer, as listed in 40 C.F.R. § 68.130 is 10,000 pounds.

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

26. From the time Respondent first had on site greater than a threshold quantity of 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.

27. From the time Respondent first had on-site greater than a threshold quantity of 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

For Program 3 facilities: 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 *either:*

a. is in North American Industry Classification System code 325211.

b. is subject to the OSHA process safety management standard, 29 C.F.R.

§ 1910.119.

EPA Findings of Violation

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

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

Count 1 – Hazard Assessment Documentation

30. The regulation at 40 C.F.R. § 68.39(a) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. Part 68. For worst-case scenarios relative to offsite consequence analyses, a description of the vessel or pipeline and substance selected as worst case, assumptions and parameters used, and the rationale for selection; assumptions shall include use of any administrative controls and any passive mitigation that were assumed to limit the quantity that could be released. Documentation shall include the anticipated effect of the controls and mitigation on the release quantity and rate.

31. Respondent failed to maintain documentation for worst-case scenario. This was not correctly documented to illustrate the rationale and accuracy of the scenario. The document was unclear as to which vessel containing vinyl acetate was worst-case.

32. Respondent's failure to maintain documentation for worst-case scenario, as required by 40 C.F.R. § 68.39(a), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2 – Mechanical Integrity

33. The regulation at 40 C.F.R. § 68.73(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. Part 68 for mechanical integrity testing. Pursuant to 40 C.F.R. § 68.73(d)(3), the owner or operator shall establish and implement written procedures to maintain the ongoing integrity of process equipment. Pursuant to 40 C.F.R. §§ 68.73(d)(2)–(3) the owner or operator shall perform inspection and tests on process equipment that follows recognized and generally accepted good engineering practices and the frequency for which shall be consistent with applicable manufacturers' recommendations and good engineering practices.

34. Respondent failed to perform inspection and tests on process equipment on eighteen (18) piping circuits and eighty (80) vessels including fifteen (15) tanks. Inspections and tests on process equipment were not at a frequency consistent with applicable recognized and generally acceptable good engineering practices. Moreover, the uncompleted inspections and past due inspections were beyond frequency timelines set by Respondent's mechanical integrity written procedures.

35. Respondent's failure to implement its written procedures to maintain the ongoing integrity of process equipment pursuant to 40 C.F.R. § 68.73(b), failure to perform inspections and tests on process equipment, and failure to perform inspections and tests on process equipment at a frequency consistent with applicable good engineering practices pursuant to 40 C.F.R. §§ 68.73(d)(2)–(3), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

36. 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 issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

37. 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.

38. 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

39. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of forty-two thousand dollars (\$42,000.00), as set forth below.

40. 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>.

41. 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

Justin McDowell
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
Mcdowell.justin@epa.gov

42. 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).

Effect of Settlement and Reservation of Rights

43. 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. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

44. 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.

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

46. 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 CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

47. Complainant reserves the right enforce the terms and conditions of this CAFO.

General Provisions

48. 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.

49. 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 CAFO 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.

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

51. This CAFO 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 CAFO.

52. The EPA and Respondent agree to the use of electronic signatures for this matter. The EPA and Respondent further agree to electronic service of this CAFO by email to the following:

To EPA: *clay.jeffrey@epa.gov*

To Respondent: *rmorse@craincaton.com*

RESPONDENT:
SEKISUI SPECIALTY CHEMICALS AMERICA, LLC

Date: 2021/04/22


Signature

CORY SIKORA
Print Name

PRESIDENT
Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

**STEPHEN
GILREIN**

Digitally signed by STEPHEN GILREIN
DN: cn=U.S. Government,
ou=Environmental Protection Agency,
o=STEPHEN GILREIN,
c=US, email=stephen.gilrein@epa.gov,
Date: 2021.04.28 16:30:38 -0500

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.

Rucki,
Thomas

Digitally signed by Rucki, Thomas
DN: cn=Rucki, Thomas,
email=Rucki.Thomas@epa.gov
Date: 2021.04.27 08:45:01 -0500

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that 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:

clay.jeffrey@epa.gov

Copy via Email to Respondent:

rmorse@craincaton.com

Mr. Robin Morse
Sekisui Specialty Chemicals America, LLC
1423 Highway 225
Pasadena, Texas 77506

Copy via Email to Regional Hearing Clerk:

vaugh.lorena@epa.gov

Office of Regional Counsel