

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**FILED**

**Jan 17, 2025**

**7:34 am**

**U.S. EPA REGION 5  
HEARING CLERK**

<b>In the Matter of:</b>	)	<b>Docket No. CAA-05-2025-0017</b>
	)	
<b>Nalco Production LLC</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Naperville, Illinois</b>	)	<b>Under Section 113(d) of the Clean Air Act,</b>
	)	<b>42 U.S.C. § 7413(d)</b>
<b>Nalco Company LLC</b>	)	
<b>Naperville, Illinois</b>	)	
	)	
<b>Respondents.</b>	)	
_____	)	

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) 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, for alleged violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the implementing regulations at 40 C.F.R. Part 68.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. The Respondents (collectively "Respondents" and "Nalco") are Nalco Production LLC (NP), a Delaware Limited Liability Company doing business in Illinois, and Nalco Company LLC (NC), a Delaware Limited Liability Company doing business in Illinois.

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

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Each Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

#### **Jurisdiction and Waiver of Right to Hearing**

7. Each Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Each Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO. Each Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

#### **Statutory and Regulatory Background**

##### **Clean Air Act, Subsections 112(r) and 113(d)**

9. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), or any other extremely hazardous substance.

10. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 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.

11. Section 112(r)(7)(A) of the CAA, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

12. Section 112(r)(7)(B)(i) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

13. Section 112(r)(7)(B)(ii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a Risk Management Plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

14. Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), defines “owner or operator” as “any person who owns, leases, operates, controls or supervises a stationary source.”

15. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source” as any buildings, structures, equipment, installations, or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

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

17. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), defines “regulated substance” as a substance listed under 42 U.S.C. § 7412(r)(3).

18. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which is codified, as amended, at 40 C.F.R. § 68.130.

19. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$57,617 per day of violation up to a total of \$460,926 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

20. Section 113(d)(1) limits the Administrator’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

21. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

## **40 C.F.R. Part 68: Chemical Accident Prevention Provisions**

22. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), the Administrator promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 Fed. Reg. 31668 (June 20, 1996), which is codified, as amended, at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (CAPP). The Administrator promulgated the most recent amendment to CAPP on May 10, 2024. 89 Fed. Reg. 17622 (March 11, 2024). (In the few instances where those May 10, 2024 amendments changed wording or cross references in provisions cited below, we have used the wording in effect at all relevant times for this CAFO.)

23. The CAPP seek to prevent accidental releases of regulated substances and minimize the consequences of those releases that do occur, by requiring owners and operators of certain stationary sources to, among other things: (1) develop and implement a management system to oversee the implementation of the risk management program elements; (2) develop and implement a risk management program that includes, but is not limited to, a hazard assessment, a prevention program, and an emergency response program; and (3) submit to EPA a RMP describing the risk management program for the source. *See* 40 C.F.R. Part 68, Subparts A – G, 40 C.F.R. §§ 68.1 – 68.195.

24. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the CAA, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

### **Applicability**

25. 40 C.F.R. § 68.10(a) of the CAPP provides, in part, that the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as

determined under 40 C.F.R. § 68.115, shall comply with the requirements of the CAPP no later than the date on which a regulated substance is first present above a threshold quantity in a process.

26. 40 C.F.R. § 68.3 of the CAPP provides that “stationary source” means 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.

27. 40 C.F.R. § 68.3 of the CAPP provides that “regulated substance” means any substance listed pursuant to Section 112(r)(3) of the CAA at 40 C.F.R. § 68.130.

28. Table 1 at 40 C.F.R. § 68.130(a) of the CAPP lists Epichlorohydrin [Oxirane, (chloromethyl)-] as a regulated toxic substance with a threshold quantity of 20,000 pounds.

29. Table 3 at 40 C.F.R. § 68.130(a) of the CAPP lists Dimethylamine [Methanamine, N-methyl-] as a regulated flammable substance with a threshold quantity of 10,000 pounds.

30. 40 C.F.R. § 68.3 of the CAPP provides that “process” means 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 that 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.

31. 40 C.F.R. § 68.3 of the CAPP provides that “covered process” means a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

32. At all relevant times, 40 C.F.R. § 68.10(i) of the CAPP provided, in part, that a covered process is subject to Program 3 requirements if the process does not meet the requirements of 40

C.F.R. § 68.10(g) and if either of the following conditions is met: (1) the process is in NAICS code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532; or (2) the process is subject to the U.S. Occupational Safety and Health Administration (OSHA) process safety management (PSM) standard, 29 C.F.R. § 1910.119. (While their wording remained the same, the paragraphs previously located at 40 C.F.R. § 68.10(g) and (i) were moved to paragraphs 68.10(j) and (l) in the May 10, 2024 amendments.)

33. The OSHA PSM standard at 29 C.F.R. § 1910.119(a)(1)(ii) states that section applies to a process which involves a Category 1 flammable gas (as defined in 1910.1200(c)) or a flammable liquid with a flashpoint below 100 °F (37.8 °C) on site in one location, in a quantity of 10,000 pounds (4535.9 kg) or more.

34. 40 C.F.R. § 68.12(a) of the CAPP provides that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single RMP, as provided in 40 C.F.R §§ 68.150 to 68.185; and that the RMP shall include a registration that reflects all covered processes.

35. 40 C.F.R. § 68.12(d) of the CAPP identifies additional CAPP requirements that the owner or operator of a stationary source with a process subject to Program 3 must meet, which include, among other provisions, to develop and implement a management system as provided in 40 C.F.R. § 68.15; conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20 through 68.42; implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87; coordinate response actions with local emergency planning and response agencies as provided in 40 C.F.R. § 68.93; develop and implement an emergency response program, as provided in 40 C.F.R. §§ 68.90 through 68.96; and submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in 40 C.F.R. § 68.175.

## **Hazard Assessment**

36. 40 C.F.R. § 68.25(a)(2)(ii) of the CAPP requires the owner or operator of a stationary source with processes subject to Program 3 to analyze and report in the RMP one worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint defined in 40 C.F.R. § 68.22 resulting from an accidental release of regulated flammable substances from covered processes under worst-case conditions defined in 40 C.F.R. § 68.22.

37. Under 40 C.F.R. § 68.25(b), determination of worst-case release quantity, the worst-case release quantity shall be the greater of the following: (1) for substances in a vessel, the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity; or (2) for substances in pipes, the greatest amount in a pipe, taking into account administrative controls that limit the maximum quantity.

## **Process Safety Information**

38. At all relevant times, 40 C.F.R. § 68.65 of the CAPP required the owner or operator of a stationary source with a process subject to Program 3 to complete a compilation of written process safety information before conducting any process hazard analysis (PHA) required by the rule. It said that process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process. (The 2024 amendments changed the reference from this rule to this part, requires them to keep the process hazard analysis up to date, and modified (d)(2).)

39. 40 C.F.R. § 68.65(c)(1)(iii) of CAPP requires information pertaining to the technology of the process to include the maximum intended inventory.



40. 40 C.F.R. § 68.65(d)(1)(ii) of CAPP requires information pertaining to the equipment in the process to include piping and instrument diagrams (P&IDs) for the covered process.

41. 40 C.F.R. § 68.65(d)(1)(iv) of CAPP requires information pertaining to the equipment in the process to include relief system design and design basis.

42. 40 C.F.R. § 68.65(d)(1)(v) of CAPP requires information pertaining to the equipment in the process to include ventilation system design.

43. 40 C.F.R. § 68.65(d)(1)(vi) of CAPP requires information pertaining to the equipment in the process to include design codes and standards employed.

44. At all relevant times, 40 C.F.R. § 68.65(d)(2) of CAPP provided that the owner or operator of a stationary source with processes subject to Program 3 shall document that equipment complies with recognized and generally accepted good engineering practices (RAGAGEP). (The 2024 amendments require the owner or operator to ensure and document that the process is designed and maintained in compliance with REGAGEP.)

### **Process Hazard Analysis**

45. 40 C.F.R. § 68.67(a) of the CAPP provides that the owner or operator of a stationary source with processes subject to Program 3 shall perform an initial process hazard analysis (PHA) on a process covered by 40 C.F.R. Part 68 by not later than June 21, 1999, and says these process hazard analyses shall be updated and revalidated, based on their completion date.

46. 40 C.F.R. § 68.67(d) of the CAPP states that the PHA shall be performed by a team with expertise in engineering and process operations, and the team shall include at least one employee who has experience and knowledge specific to the process being evaluated. Also, one member of the team must be knowledgeable in the specific process hazard analysis methodology being used.

47. 40 C.F.R. § 68.67(e) of the CAPP provides that the owner or operator shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

48. 40 C.F.R. § 68.67(g) of the CAPP provides, in part, that the owner or operator of a stationary source with processes subject to Program 3 shall retain process hazard analyses and updates or revalidations for each process covered by 40 C.F.R. § 68.7, as well as the documented resolution of recommendations described in 40 C.F.R. § 68.67(e) of the CAPP for the life of the process.

### **Operating Procedures**

49. 40 C.F.R. § 68.69(a) of the CAPP provides, in part, that the owner or operator of a stationary source with processes subject to Program 3 shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with process safety information and that address at least the elements in 40 C.F.R. § 68.69(a)(1) through (4).

50. 40 C.F.R. § 68.69(a)(1)(iv) of the CAPP provides that the owner or operator of a stationary source with processes subject to Program 3 shall develop and implement written operating procedures that address, among other things, the following steps for each operating phase: emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner.

51. 40 C.F.R. § 68.69(a)(2) of the CAPP provides, in part, that the owner or operator of a stationary source with processes subject to Program 3 shall develop and implement written operating procedures that address the following operating limits: (i) consequences of deviation; and (ii) steps required to correct or avoid deviation.

52. 40 C.F.R. § 68.69(a)(3)(ii) of the CAPP provides, in part, that the owner or operator of a stationary source with processes subject to Program 3 shall develop and implement written operating procedures that address the following safety and health considerations: precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment.

53. At all relevant times, 40 C.F.R. § 68.69(a)(4) of the CAPP provided that the owner or operator of a stationary source with processes subject to Program 3 shall develop and implement written operating procedures that address safety systems and their functions. (The 2024 Amendments added “, including documentation when monitoring equipment associated with prevention and detection of accidental releases from covered processes is removed due to safety concerns from imminent natural hazard” to “[s]afety systems and their functions” at § 68.69(a)(4).)

54. 40 C.F.R. § 68.69(c) of the CAPP provides that the operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. It requires the owner or operator to certify annually that the operating procedures are current and accurate.

### **Mechanical Integrity**

55. 40 C.F.R. § 68.73(b) of the CAPP provides that the owner or operator of a stationary source with a process subject to Program 3 shall establish and implement written procedures to

maintain the on-going integrity of process equipment set forth at 40 C.F.R. § 68.73(a). Process equipment includes pressure vessels, storage tanks, piping systems, relief and vent system, emergency shutdown systems, pumps, and control such as sensors, alarm, interlocks and monitoring devices.

56. 40 C.F.R. § 68.73(c) of the CAPP provides that the owner or operator of a stationary source with processes subject to Program 3 shall train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.

57. 40 C.F.R. § 68.73(d)(1) – (3) of the CAPP provides that (1) inspections and tests shall be performed on process equipment; (2) Inspection and testing procedures shall follow RAGAGEP; (3) the frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

58. 40 C.F.R. § 68.73(d)(4) of the CAPP provides that the owner or operator of a stationary source with processes subject to Program 3 shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

59. 40 C.F.R. § 68.73(e) of the CAPP provides that the owner or operator of a stationary source with processes subject to Program 3 shall correct deficiencies in equipment that are outside acceptable limits (defined by process safety information in § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

## **Incident Investigation**

60. 40 C.F.R. § 68.81(a) of the CAPP provides that the owner or operator of a stationary source with processes subject to Program 3 shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release.

61. As defined in 40 C.F.R. § 68.3 of the CAPP, a catastrophic release means a major uncontrolled emission, fire, or explosion, involving one or more regulated substances that presents imminent and substantial endangerment to public health and the environment.

62. 40 C.F.R. § 68.81(b) of the CAPP provides that an incident investigation shall be initiated as promptly as possible, but not later than 48 hours following the incident.

## **Contractors**

63. 40 C.F.R. § 68.87(b)(5) of the CAPP provides, that the owner or operator of a stationary source with processes subject to Program 3 shall periodically evaluate the performance of the contract owner or operator in fulfilling their obligations as specified in paragraph 40 C.F.R. § 68.87(c) of CAPP.

## **Risk Management Plan**

64. 40 C.F.R. § 68.160(a) of the CAPP provides, in part, that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall complete a single registration form and include it in the RMP. It says the form shall cover all regulated substances handled in covered processes.

65. Under Section 40 C.F.R. § 68.160(b)(7) of the CAPP, the registration must include, for each covered process, the name and CAS number of each regulated substance held above the threshold quantity in the process, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits, the five- or six-digit NAIC code that most closely corresponds to the process, and the Program level of the process.

## **Factual Allegations and Alleged Violations**

### **Applicability**

66. Respondent NP owns the facility located at 6216 W. 66<sup>th</sup> Place, Chicago, Illinois (Facility).

67. Respondent NC operates the Facility.

68. The Respondents are both wholly owned subsidiaries of Ecolab Inc., a Delaware Corporation headquartered in St. Paul, Minnesota that does business in Illinois.

69. The Facility is a colloidal and polymer blend manufacturing facility.

70. The Facility has used Epichlorohydrin and Dimethylamine to manufacture chemicals on site since at least 1999.

71. The Facility maintains a maximum inventory of 235,000 pounds of the regulated toxic substance Epichlorohydrin, as determined under 40 C.F.R. § 68.115, which exceeds the threshold quantity of 20,000 pounds of Epichlorohydrin as set forth at Table 1 to 40 C.F.R. § 68.130.

72. The Facility maintains a maximum inventory of 52,000 pounds of the regulated flammable substance Dimethylamine in an aqueous solution, as determined under 40 C.F.R. § 68.115, which exceeds the threshold quantity of 10,000 pounds of Dimethylamine as set forth at Table 3 to 40 C.F.R. § 68.130.

73. At the Facility, NC offloads the regulated substances Epichlorohydrin and Dimethylamine from trucks into one of two storage tanks, then routes them to two reactors for batch production of chemicals.

74. The Facility is a stationary source as defined at Section 40 C.F.R. § 68.3 of the CAPP and Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

75. The Facility's process for chemical manufacturing that use Epichlorohydrin and Dimethylamine at the Facility was and is a "process," as that term is defined at 40 C.F.R. § 68.3.

76. The Respondents' process for chemical manufacturing that use Epichlorohydrin and Dimethylamine at the Facility was and is a "Covered Process," and as that term is defined at 40 C.F.R. § 68.3.

77. The Covered Process at the Facility has had a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115 since at least June 21, 1999.

78. The Facility is subject to the requirements of the CAPP in accordance with 40 C.F.R. § 68.10.

79. The Covered Process at the Facility is subject to the U.S. Occupational Safety and Health Administration (OSHA) process safety management standard, 29 C.F.R. § 1910.119, because it contains greater than the threshold quantity of 10,000 pounds of Dimethylamine in an aqueous solution that is flammable as defined in 29 C.F.R. § 1910.1200(c).

80. There are public receptors within the distance to endpoint for a worst-case release assessment, therefore the Covered Process at the Facility did not meet the Program 1 requirements at 40 C.F.R. § 68.10(g) (2023). (This provision remains the same but is now located at 68.10(j).)

81. The Facility is subject to Program 3 because the Covered Process did not meet the Program 1 eligibility requirements at 40 C.F.R. § 68.10(g) (2023) (now at § 68.10(j)) and it is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

#### **Facility Inspection**

82. On October 25 and 26, 2021, EPA conducted an announced inspection at the Facility (October 2021 inspection).

83. During the October 2021 inspection, EPA inspectors reviewed numerous documents provided by the Respondents. The documents included aspects of the Facility's RMP involving the

management system, PHA, operating procedures, training, mechanical integrity, management of change, hot work, and contractors.

84. Information gathered during the inspection EPA conducted, identified the following violations of CAPP requirements:

#### **Hazard Assessment**

85. The Respondents failed to report a worst-case release scenario that reflects the greatest amount held in a single vessel, in violation of 40 C.F.R. § 68.25(b)(1). The Respondents did not use the maximum capacity for the largest vessel within the Epichlorohydrin and Dimethylamine processes.

#### **Process Safety Information**

86. The Respondents failed to include in the Facility's process safety information the maximum intended inventory of the Facility's Program 3 process, in violation of 40 C.F.R. § 68.65(c)(1)(iii).

87. The Respondents failed to include in the Facility's process safety information the P&IDs for the Facility's Program 3 process, in violation of 40 C.F.R. § 68.65(d)(1)(ii).

88. The Respondents failed to include in the Facility's process safety information the relief system design and design basis for the Facility's Program 3 process, in violation of 40 C.F.R. § 68.65(d)(1)(iv).

89. The Respondents failed to include in the Facility's process safety information the ventilation system design for the Facility's Program 3 process, in violation of 40 C.F.R. § 68.65(d)(1)(v).

90. The Respondents failed to include in the Facility's process safety information the design codes and standards employed by the Facility for its Program 3 process, in violation of 40 C.F.R. § 68.65(d)(1)(vi).



91. The Respondents failed to document that equipment at the Facility complies with RAGAGEP, in violation of 40 C.F.R. § 68.65(d)(2).

### **Process Hazard Analysis**

92. The Respondents failed to establish a system to promptly address the findings and recommendations of the team that performed the PHA at the Facility; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; and develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions, in violation of 40 C.F.R. § 68.67(e). Specifically, there were fourteen recommendations for tank 106, twelve recommendations for tank 539, fourteen recommendations for Reactor 195 and two recommendations for Reactor 155 from the 2013 PHA and 2018 PHA that NALCO had not addressed by the time of the October 2021 Inspection.

93. The Respondents failed to retain process hazards analyses and updates or revalidations for each process at the Facility, and the documented resolution of the recommendations of the team that performed the PHA for the life of the process, in violation of 40 C.F.R. § 68.67(g). The Respondents were unable to provide a copy of the 2013 PHA for the Reactor 155 system.

### **Operating Procedures**

94. The Respondents failed to develop and implement written operating procedures for the Facility that addressed steps for the following operating phase: emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner, in violation of 40 C.F.R. § 68.69(a)(1)(iv).

95. The Respondents failed to develop and implement written operating procedures for the Facility that address the consequences of deviation from operating limits, in violation of 40 C.F.R. § 68.69(a)(2)(i).

96. The Respondents failed to develop and implement written operating procedures for the Facility that address the steps required to correct or avoid deviation from operating limits, in violation of 40 C.F.R. § 68.69(a)(2)(ii).

97. The Respondents failed to develop and implement written operating procedures for the Facility that address the following safety and health consideration: precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment, in violation of 40 C.F.R. § 68.69(a)(3)(ii).

98. The Respondents failed to develop and implement written operating procedures for the Facility that address safety systems and their functions, in violation of 40 C.F.R. § 68.69(a)(4).

99. The Respondents failed to certify annually that the operating procedures at the Facility are current and accurate, in violation of 40 C.F.R. § 68.69(c).

#### **Mechanical Integrity**

100. The Respondents failed to establish and implement written procedures to maintain the on-going integrity of process equipment listed in 40 C.F.R. § 68.73(a) at the Facility, in violation of 40 C.F.R. § 68.73(b).

101. The Respondents failed to train each employee involved in maintaining the on-going integrity of process equipment at the Facility in an overview of that process equipment and its hazards, and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner, in violation of 40 C.F.R. § 68.73(c).

102. The Respondents failed to perform inspections and tests on process equipment, (e.g. covered process pipelines, tank 106 internally, sensors, and the Epichlorohydrin weigh-tank) at the Facility, in violation of 40 C.F.R. § 68.73(d)(1).

103. The Respondents' procedures for inspection and testing at the Facility failed to follow RAGAGEP, in violation of 40 C.F.R. § 68.73(d)(2).

104. The Respondents failed to conduct inspections and tests at the Facility at a frequency that is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience, in violation of 40 C.F.R. § 68.73(d)(3).

105. The Respondents failed to include a description of the inspection or test performed and the results of the inspection or test at the Facility in documentation of inspections and tests performed on covered process equipment, including pipelines, tank 106 internally, sensors, and the Epichlorohydrin weigh-tank, in violation of 40 C.F.R. § 68.73(d)(4).

106. The Respondents failed to correct deficiencies in equipment at the Facility, specifically Reactor 195, that was outside acceptable limits, before further use or in a safe and timely manner when necessary means are taken to assure safe operations, in violation of 40 C.F.R. § 68.73(e). At the time of the October 2021 inspection, Reactor 195 remained in use but information Nalco provided EPA indicated that there were deficiencies in Reactor 195 found in January 26, 2017 that had not been corrected. The Respondents provided records on February 13, 2023 and November 3, 2023, about the repairs to Reactor 195 that were conducted later, in the fall of 2022.

#### **Incident Investigation**

107. The Respondents failed to initiate incident investigations no later than 48 hours following an incident at the Facility which resulted in, or could reasonably have resulted in a catastrophic release, in violation of 40 C.F.R. § 68.81(b). The Facility's Project Safety Management

(PSM) equipment incident summary indicated that the Respondents allowed 5 days to elapse before initiating investigation of a February 5, 2021 incident involving elevated pressure on tank 539 caused by a faulty nitrogen regulator, where an area was evacuated and barricaded; this incident could have resulted in over pressurization of tank 539 and release of a regulated substance. The Facility's PSM equipment incident summary also indicated that the Respondents allowed 13 days to elapse before initiating investigation of a July 17, 2020 incident where an employee performing an instrument calibration on tank 106 removed a plug and felt a burning sensation on their hand; this incident could have resulted in an injury if it had been a larger uncontrolled release.

### **Contractors**

108. The Respondents failed to periodically evaluate the performance of the contract owner or operator in fulfilling their obligations at the Facility, in violation of 40 C.F.R. § 68.87(b)(5).

### **Risk Management Plan**

109. The Respondents failed to include in the RMP registration form for the Facility the maximum quantity of each regulated substance or mixture in process (in pounds) to two significant digits for its covered process, in violation of 40 C.F.R. § 68.160(b)(7).

### **Clean Air Act Violations**

110. Pursuant to Section 112(r)(7)(E) of the CAA, the above-described violations of the regulations and requirements of 40 C.F.R. Part 68, are violations of the CAA.

111. On June 30, 2022, EPA issued a Finding of Violation (FOV) to NC for violations listed above in paragraphs 85 – 110.

112. On August 2, 2022, the Respondents submitted to EPA documentation of proposed actions and actions already taken by the Respondents to address the violations at the Facility alleged in the FOV.

113. On August 3, 2022, representatives of EPA and the Respondents discussed the FOV.

114. On February 13 and November 3, 2023, the Respondents submitted to EPA additional documentation of actions taken by the Respondents to address the violations at the Facility alleged in the FOV.

115. In response to the FOV, the Respondents performed the following:

- a. Hazard Assessment: resubmitted their RMP on October 26, 2021 with the correct worst-case scenario;
- b. Process Safety Information: initiated review of Original Equipment Manufacturer documents and rerated tank 106;
- c. Process hazard analysis: Completed the 41 recommendations from the June 2018 PHA by September 1, 2023;
- d. Operating Procedures: Created emergency shutdown procedures, added consequences of deviations to operating procedures, determined that respirator are not required PPE for the “PRD-SOP-2024 Bulk Unloading of Epichlorohydrin (R-384) from Tank Trucks REV 7” operating procedure, provided operating procedures that include safety systems, provided a complete list of safety systems, added steps to correct or avoid deviations to operating procedures, created a recurring action to ETQ system and VelocityEHS to annually certify operating procedures, and recertified all operating procedures by November 2, 2023;
- e. Mechanical Integrity: Calibrated sensors, performed inspections of pipelines by December 14, 2021, performed an inspection on the epichlorohydrin weigh-tank by March 31, 2022, performed an inspection on tank 106 as part of the vessel rerate by December 6, 2021, replaced the pressure relief valves on tank 539 and tank 549,

initiated a review of the facility preventative maintenance program, completed repairs to deficiencies identified in 2017 on reactor 195 by November 29, 2022, and on October 17, 2022 completed internal and external inspections on reactor 195;

- f. Risk Management Plan: Resubmitted the RMP on October 26, 2021.

### **Civil Penalty**

116. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is \$401,300.00.

117. Penalty Payment. Respondents agree to:

a. pay the civil penalty of \$401,300 within 30 days after the effective date of this CAFO.

b. Pay the civil penalty using any method provided in the table below.

<b>Payment Method</b>	<b>Payment Instructions</b>
Automated Clearinghouse (ACH) payments made through the US Treasury	US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking  In the comment area of the electronic funds transfer, state each Respondent’s name and the CAFO docket number.
Wire transfers made through Fedwire	Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency  In the comment area of the electronic funds transfer, state each Respondent’s name and the docket number of this CAFO.
Payments made through <a href="https://www.pay.gov">Pay.gov</a>	<ul style="list-style-type: none"> <li>Go to <a href="https://www.pay.gov">Pay.gov</a> and enter “SFO 1.1” in the form search box on the top left side of the screen.</li> </ul>

<p>Payers can use their credit or debit cards (Visa, MasterCard, American Express &amp; Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> <li>• Open the form and follow the on-screen instructions.</li> <li>• Select your type of payment from the "Type of Payment" drop down menu.</li> <li>• Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field</li> </ul>
<p>Cashier's or certified check payable to "Treasurer, United States of America."</p> <p>Please notate the CAFO docket number on the check</p>	<p>For <b>standard delivery</b>:</p> <p>U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979078 St. Louis, Missouri 63197-9000</p> <p>For <b>signed receipt confirmation</b> (FedEx, UPS, Certified Mail, etc):</p> <p>U.S. Environmental Protection Agency Government Lockbox 979078 3180 Rider Trail S. Earth City, Missouri 63045</p>

118. Within 24 hours of the payment of the civil penalty Respondents must send a notice of payment and state each Respondent's name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency, Region 5  
[R5airenforcement@epa.gov](mailto:R5airenforcement@epa.gov)

Maria Gonzalez  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
[gonzalez.maria@epa.gov](mailto:gonzalez.maria@epa.gov)

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
[r5hearingclerk@epa.gov](mailto:r5hearingclerk@epa.gov)

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

120. If Respondents do not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

121. Respondents must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondents must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondents must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

122. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondents to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3),



and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and each Respondent herein agrees, that:

- a. Each Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Each Respondent shall therein certify that its completed IRS Form W-9 includes such Respondent’s correct TIN or that such Respondent has applied and is waiting for issuance of a TIN;
- c. Each Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at [wise.milton@epa.gov](mailto:wise.milton@epa.gov), within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that a Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, such Respondent shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s receipt of a TIN issued by the IRS.

### **General Provisions**

123. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [gonzalez.maria@epa.gov](mailto:gonzalez.maria@epa.gov) (for Complainant), and [Katie.Roek@ecolab.com](mailto:Katie.Roek@ecolab.com) (for Respondents). Respondents understand that the CAFO will become publicly available upon filing.

124. This CAFO resolves only Respondents’ liability for federal civil penalties for the violations alleged in this CAFO.

125. The effect of the settlement described in paragraph 124, above, is conditioned upon the accuracy of Respondents’ representations to EPA, as memorialized in paragraphs 115 and

128 of this CAFO and Respondent's letters dated August 2, 2022, February 13, 2023, and November 3, 2023.

126. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

127. This CAFO does not affect Respondents' responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 124, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

128. Each Respondent certifies that it is complying fully with 40 C.F.R. Part 68, the Chemical Accident Prevention Provisions.

129. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondents' "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

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

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

132. Each party agrees to bear its own costs and attorney's fees in this action.

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

**Consent Agreement and Final Order**

**In the Matter of: Nalco Production LLC and Nalco Company LLC**

**Docket No. CAA-05-2025-0017**

**Nalco Production LLC, Respondent**

1/6/25  
Date

Earl Young  
Earl Young  
Clearing Plant Manager  
Nalco Production LLC

**Consent Agreement and Final Order**

**In the Matter of: Nalco Production LLC and Nalco Company LLC**

**Docket No. CAA-05-2025-0017**

**Nalco Company LLC, Respondent**

1/6/25  
Date

Earl Young  
Earl Young  
Clearing Plant Manager  
Nalco Company LLC

**Consent Agreement and Final Order**

**In the Matter of: Nalco Production LLC and Nalco Company LLC**

**Docket No. CAA-05-2025-0017**

**United States Environmental Protection Agency, Complainant**

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Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**

**In the Matter of: Nalco Production LLC and Nalco Company LLC**

**Docket No. CAA-05-2025-0017**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5