

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
Dallas, Texas

FILED

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REGIONAL HEARING CLERK
EPA REGION 6

In the Matter of

§

Bio-Lab, Inc.

§

Docket No. CAA-06-2024-3316

Westlake, Louisiana

§

Respondent

§

§

ADMINISTRATIVE ORDER ON CONSENT

Preliminary Statement

1. The U.S. Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Bio-Lab, Inc. (“Respondent”) have agreed to voluntarily enter into this Administrative Order on Consent (“Order”) for the purposes of carrying out the goals of Section 112(r) of the Clean Air Act (“CAA”), 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68.

Jurisdiction

2. This Order is entered into pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B). Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), provides that whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of Subchapter I of the CAA, which includes, among other things, the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), the Administrator may issue an order requiring compliance with such requirement or prohibition.

Parties

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

4. The Respondent is Bio-Lab, Inc., a company authorized to conduct business in the State of Louisiana.

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 prevent accidental releases of certain regulated substances and 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. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), commonly referred to as the General Duty Clause, owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty in the same manner and the same extent as the Occupational Safety and Health Act, 29 U.S.C. § 654 et. seq., to identify hazards which may result from accidental releases using appropriate hazard assessment techniques, to design and maintain a safe facility, taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

7. 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.

Definitions

8. 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.

9. 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.

10. 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.

11. The term “extremely hazardous substance” means an extremely hazardous

substance within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Such substances include any chemical which may, as a result of short-term exposures associated with releases to the air, cause death, injury, or property damage due to its toxicity, reactivity, flammability or corrosivity.¹ The term includes, but is not limited to, regulated substances listed in Section 112(r)(3), 42 U.S.C. § 7412(r)(3), and 40 C.F.R. 68.130. Also, the release of any substance that causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or that causes substantial property damage by blast, fire, corrosion, or other reaction would create a presumption that such substance is extremely hazardous.²

EPA Findings of Fact and Conclusions of Law

12. The 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).

13. The Respondent is the owner and operator of the facility located at: 910 Interstate 10, Westlake, LA 70669 (the “Facility”).

14. On March 22, 2023, a process upset within a particulate scrubber at the Facility caused an accidental release (the “Incident”). Following discovery of the accidental release, Bio-Lab made a timely notification to the National Response Center. There were no reported injuries or property damage as a result of this Incident.

15. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, the EPA requested on June 13, 2023, and Respondent provided, documentation and information concerning the Incident and Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R.

¹ Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Sen. Report No. 228, 101st Congress, 1st Session 211 (1989).

² *Id.*

Part 68 (the "Investigation").

16. On November 7, 2023, the EPA sent Respondent a Notice of Potential Violation and Opportunity to Confer letter. On November 13, 2023, the EPA responded to the documentation and information received from Respondent as a result of the opportunity to confer and articulated the EPA's position concerning Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

17. 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.

18. The Respondent operates a chemical manufacturing and storage facility. The Bio-Lab Lake Charles facility manufactures powders containing trichloroisocyanuric acid ("trichlor"), made from cyanuric acid and chlorine. Those powders are then processed at other facilities, including other Bio-Lab facilities, to produce tablets and other consumer products used as cleaning agents for swimming pools and hot tubs. With the exception of chlorine, which originates from a third-party supplier and is delivered by pipeline directly into the Bio-Lab facility process, the raw materials and finished powders containing trichlor are stored onsite.

19. Chlorine is a chemical that may, as a result of short-term exposures associated with releases to the air, cause death, injury, or property damage due to its toxicity, flammability, or volatility. Chlorine gas is irritating and corrosive to the eyes, skin, and respiratory tract. Exposure to chlorine may cause burning of the eyes, nose, and throat; cough as well as constriction and edema of the airway and lungs can occur. If concentrated chlorine gas or chlorine-generating solutions contact the skin, chemical burns may occur. Chlorine is not flammable but reacts explosively or forms explosive compounds with many common

substances. Chlorine is highly toxic and corrosive. An acute exposure to chlorine can cause severe injury. Chlorine gas may cause toxic effects if inhaled or absorbed through the skin, including but limited to cardiovascular collapse or a frostbite injury. Concentrated vapors may cause severe chemical burns, leading to cell death and ulceration. Accordingly, chlorine is an “extremely hazardous substance,” within the meaning of the General Duty Clause of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

20. The Facility is not a Risk Management Program covered process. Trichlor is not regulated under the OSHA Process Safety Management (“PSM”) Standard or the EPA’s Risk Management Program (RMP) Rule, Bio-Lab was not required to implement baseline process safety management system elements to manage the safety of -related operations under these regulations. However, from the time Respondent first processed or handled chlorine at the Facility, Respondent was subject to the requirements of the General Duty Clause in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

EPA Findings of Violation

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

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

Count 1 – General Duty Clause (Failure to Maintain a Safe Facility)

23. The CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1), imposes a general duty on the owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other

extremely hazardous substance, to design and maintain a safe facility, taking such steps as are necessary to prevent releases.

24. At the time of the Incident, the particulate scrubber at issue required additional neutralizing caustic, resulting in inadequate flow from vessel and causing the pH condition within the scrubber to fall outside normal operating parameters, resulting in the release of trichloroethene fines and residual chlorine gas.

25. Respondent's failure to maintain normal operating parameters within the scrubber, was a failure to maintain a safe facility, taking such steps as are necessary to prevent releases, in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Order for Compliance

26. Based on the EPA Findings of Fact and Conclusions of Law and the EPA Findings of Violation set forth above, and pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), as amended, the Respondent is hereby ORDERED and agrees to comply with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

27. The EPA and the Respondent agree that the Respondent shall, as expeditiously as possible, but in no event later than ninety (90) days from the effective date of this Order, complete the following actions (Compliance Actions):

- a. In accordance with the obligations of the General Duty Clause, contained in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the Respondent shall submit to the EPA a certification statement of the list of actions taken by the facility to design and maintain a safe facility, taking such steps as are necessary to prevent releases, which shall include all supporting

documentation related to the completion of the actions.

- i. Implement additional interlocks in the affected process equipment.
- ii. Install perimeter chlorine monitors to allow Bio-Lab to better identify chlorine releases.
- iii. Conduct a Dry Side Process Hazard Analysis and a Wet Side Process Hazard Analysis at the Facility to identify any potential hazards.

Submissions

28. The Respondent must provide documentation of completion of the compliance actions described above to the EPA within ninety (90) days of the effective date of this Order.

All documentation shall be submitted as set forth in this sub-section.

29. All submissions to the EPA required by this Order shall contain the following certification signed by an authorized representative of the Respondent:

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

30. All submissions to the EPA required by this Order shall be sent by electronic mail

to:

Carlos Flores
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
flores.carlos@epa.gov

31. All documents submitted by the Respondent to the EPA in the course of

implementing this Order shall be available to the public unless identified and determined to be confidential business information pursuant 40 C.F.R. Part 2, Subpart B.

Stipulated Penalties

32. The Respondent shall be liable for stipulated penalties for failure to comply with the requirements of this Order. The following stipulated penalties shall accrue per violation per day for failure to comply with the Compliance Actions or Submissions requirements above:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$15,000	1st through 30th day
\$37,500	31st day and beyond

33. All penalties shall begin to accrue on the day after the complete performance is due, or on the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity required by this Order.

34. The payment of penalties shall not alter in any way the Respondent's obligation to comply with the provisions of this Order.

35. All penalties accruing under this section shall be due and payable to the United States within thirty (30) days of the Respondent's receipt from the EPA of a demand for payment of stipulated penalties. Such payments shall identify the 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
Government Lockbox 979078
3180 Rider Trail S.
Earth City, MO 63045

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

36. A copy of the check or other information confirming payment shall simultaneously be sent by electronic mail to:

Carlos Flores
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
flores.carlos@epa.gov

37. The Respondent understands that failure to timely pay any portion of the stipulated 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 the stipulated penalty from the date of delinquency until such 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).

Other Terms and Conditions

38. By entering into this Order, the Respondent: (a) consents to and agrees to not contest the EPA's authority or jurisdiction to issue or enforce this Order; and (b) agrees to undertake all actions required by this Order.

39. The Respondent neither admits nor denies the EPA Findings of Fact and Conclusions of Law and the EPA Findings of Violation.

40. The Respondent and the EPA agree to bear their respective costs and attorney's fees. The Respondent waives its right to seek reimbursement of their costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 104-121), and any regulations promulgated thereunder.

General Provisions

41. The Respondent waives any and all remedies, claims for relief and otherwise available rights to jurisdictional or administrative review that the Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1), or under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

42. Any violation of this Order may result in an additional enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413. The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes the Administrator to:

- a. issue an administrative penalty order under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), assessing a civil penalty not to exceed \$55,808 (or amount as adjusted by the Civil Monetary Penalty Adjustment Rule) per day of violation, pursuant to Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B);
- b. bring a civil judicial enforcement action for permanent or temporary injunction, or to assess and recover a civil penalty not to exceed \$109,024 (or amount as adjusted by the Civil Monetary Penalty Adjustment Rule) per day of violation, or

both, pursuant to Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2); or

- c. request the Attorney General to commence a criminal action pursuant to Section 113(c) of the CAA, 42 U.S.C. § 7413(c).

43. This Order does not resolve any civil or criminal claims for violations alleged in this Order. In accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), issuance of this Order does not preclude the EPA from assessing penalties, obtaining injunctive relief, or taking any other action authorized under the CAA, or other applicable federal laws or regulation. This Order does not affect the obligation of the Respondent to comply with all federal, state, and local statutes, regulations, and permits.

44. Nothing herein shall be construed to limit the power of the EPA to undertake any action against the Respondent or any person in response to conditions that may present an imminent and substantial endangerment to public health, welfare, or the environment.

45. Nothing in this Order shall limit the EPA's right to obtain access to, and/or inspect the Facility, and/or to request additional information from the Respondent pursuant to the authority of Section 114 of the CAA, 42 U.S.C. § 7414.

46. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the Order for Compliance is restitution, remediation, or required to come into compliance with the law.

47. Pursuant to Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), this Order shall be effective when fully executed, shall not exceed the earlier of one year or the date of a determination by the EPA that Respondent has achieved compliance with all terms of this

Order, and shall be nonrenewable.

48. The EPA and Respondent may subsequently amend this Order, in writing, in accordance with the authority of the CAA. In the event of any amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by the original Order.

49. The EPA and the Respondent agree to the use of electronic signatures for this matter. The EPA and the Respondent further agree to electronic service of this Order by electronic mail to the following:

To EPA:

pittman.lawrence@epa.gov

flores.carlos@epa.gov

To Respondent:

peggy.otum@wilmerhale.com

msmith1@kikcorp.com

**RESPONDENT:
BIO-LAB, INC.**

Date: _____

Michael Smith

Digitally signed by Michael Smith
Date: 2024.03.19 06:58:22
-04'00'

Signature

Print Name

Title

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

Date: _____

Cheryl T. Seager

Digitally signed by Cheryl T.
Seager
Date: 2024.03.19 15:57:12
-05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Administrative Order on Consent was filed with me, to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that I sent a true and correct copy on this day in the following manner to the email addresses Administrative Order on Consent to:

Copy via Email to Complainant:

Lawrence Pittman
pittman.lawrence@epa.gov

Copy via Email to Respondent:

Peggy Otum
Wilmer Cutler Pickering Hale & Dorr LLP
One Front Street, Suite 3500
San Francisco, CA 94111 USA
peggy.otum@wilmerhale.com

Michael Smith
Vice President of Environmental, Health and Safety
KIK Consumer Products
1725 North Brown Road
Lawrenceville, GA 30043
msmith1@KIKCORP.com

LORENA
VAUGHN

Digitally signed by LORENA
VAUGHN
Date: 2024.03.20 12:54:11
-05'00'

Signed
Office of Regional Counsel
U.S. EPA, Region 6