

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
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EPA REGION VI

IN THE MATTER OF:)
)
)
EAGLE US 2 LLC)
WESTLAKE, LOUISIANA)
)
RESPONDENT)
_____)

DOCKET NO. CAA-06-2015-3337

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and Eagle US 2 LLC (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations contained herein; however, the Respondent neither admits nor denies the specific factual allegations or conclusions of law contained in this CAFO.

3. For the purposes of this proceeding only, the Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and

waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall only resolve the Respondent's liability for civil penalties for those violations and facts which are set forth herein.

5. The Respondent consents to the issuance of the CAFO, to the assessment and payment of the civil penalty in the amount and by the method set forth in this CAFO, and the conditions specified in the CAFO.

6. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement, to execute it, and to legally bind that party to it.

7. This CAFO shall apply to and be binding upon the Respondent, its officers, directors, servants, employees, agents, authorized representatives, successors and assigns.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

8. Eagle US 2 LLC (Respondent) is a Delaware limited liability company authorized to do business in the State of Louisiana.

9. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency of the United States and any officer, agent, or employee thereof."

10. The Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

11. The Respondent owns and operates a chemical manufacturing facility located at 1300 PPG Drive, Westlake, Louisiana 70669.

12. "Stationary source" is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C.

§ 7412(r)(2)(C), and 40 C.F.R. § 68.3 as meaning:

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.

13. The Respondent's facility identified in Paragraph 11 is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

14. The Respondent is the owner and/or operator of the stationary source identified in Paragraph 11.

15. Ammonia (anhydrous), chlorine, ethyl chloride, and vinyl chloride are each a "regulated substance", as set forth in 40 C.F.R. § 68.130.

16. "Process" is defined in 40 C.F.R. § 68.3 as meaning

any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of activities. For the purpose 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.

17. The Respondent has the following processes at the stationary source identified in Paragraph 11:

- A. South Liquefaction (Chlor-Alkali) (excluding Brine Treatment);
- B. North Liquefaction (Chlor-Alkali) (excluding Brine Treatment);
- C. Chlorine Tank Car Loading;
- D. Perchloroethylene/Trichloroethylene Unit - the Ammonia process only;
- E. Tri-Ethane II Unit - Methyl Chloroform process chlorination and Vinyl Chloride process;
- F. Ethyl Chloride Unit - EC/HCL process;
- G. Greater EDC Unit - EDC chlorination EDC/TRANS;
- H. North Dock (excluding solvent storage);
- I. PHH Unit - Vinyl Chloride process, EDC chlorination process;
- J. Vinyl Chloride Storage South Terminal;

- K. Sulfur Chloride Unit;
- L. Vinyl Chloride and Ethyl Chloride loading at Derivatives Shipping Area;
- M. Membrane Cell Chlorine (excluding Brine Treatment);
- N. Plant "C" Chlorine (excluding Brine Treatment); and
- O. Plant "A" Chlorine (excluding Brine Treatment)

18. 40 C.F.R. § 68.130 specifies the following threshold quantities for the regulated substances listed below:

- A. ammonia (anhydrous) – 10,000 pounds;
- B. chlorine – 2,500 pounds;
- C. ethyl chloride – 10,000 pounds; and
- D. vinyl chloride – 10,000 pounds.

19. The Respondent has exceeded the threshold quantity for one or more of the following regulated substances at the processes identified in Paragraph 17:

- A. ammonia (anhydrous);
- B. chlorine;
- C. ethyl chloride; and
- D. vinyl chloride.

20. "Covered process" is defined in 40 C.F.R. § 68.3 as meaning "a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115."

21. Each process identified in Paragraphs 17 and 19 is a "covered process" as that term is defined by 40 C.F.R. § 68.3.

22. The covered processes identified in Paragraphs 17, 19, and 21 are subject to the "Program 3" requirements of the Risk Management Program (RMP) regulations and must, among other things, comply with the Program 3 Prevention Program of 40 C.F.R. Part 68, Subpart D.

23. On or about April 8 – 12, 2013, an EPA inspector conducted an inspection of the Respondent's facility.

24. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), authorizes EPA to bring an administrative action for penalties that exceed \$320,000¹ and/or the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

25. EPA and the U.S. Department of Justice have jointly determined that the Complainant can administratively assess a civil penalty even though the penalty might exceed the statutory amount and the alleged violations have occurred more than twelve (12) months prior to the initiation of the administrative action.

B. VIOLATIONS

Count One – Failure to Follow Operating Procedures

26. 40 C.F.R. § 68.69(a)(1) provides that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address, among other things, startup following a turnaround, or after an emergency shutdown.

27. The PHH #2 Furnace is part of the PHH Unit.

28. The PHH Unit is a “covered process” as that term is defined by 40 C.F.R. § 68.3.

¹ The maximum penalty that can be assessed (without a waiver) under Section 113 of the Clean Air Act was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$220,000 for violations occurring between January 30, 1997 and March 15, 2004, to \$270,000 for violations occurring between March 15, 2004 and January 12, 2009, to \$295,000 for violations occurring between January 12, 2009 and December 6, 2013, and to \$320,000 for violations occurring after December 6, 2013.

29. On or about December 20, 2013, the Respondent attempted to restart the PHH #2 Furnace following a trip condition.

30. On or about December 20, 2013, the Respondent failed to adequately follow the operating procedures for the restart of the PHH #2 Furnace.

31. On or about December 20, 2013, a fire occurred at the PHH # 2 Furnace during an attempted restart of the PHH #2 Furnace.

32. The fire resulted in the release of approximately 2400 pounds of vinyl chloride and approximately 130,000 pounds of hydrogen chloride (anhydrous) [hydrochloric acid].

33. The fire resulted in approximately \$8,000,000 of on-site property damage.

34. According to information the Respondent obtained from third parties, the fire resulted in the following off-site impacts:

- a. 1 person hospitalized;
- b. 27 persons received medical treatment;
- c. 130 persons were evacuated; and
- d. approximately 5,000 persons were sheltered-in-place.

35. Therefore, the Respondent violated 40 C.F.R. § 68.69(a)(1) by failing to adequately follow the operating procedures for the restart of the PHH #2 Furnace.

Count Two – Failure to Develop and Implement Operating Procedures Which Included Steps Required to Correct or Avoid Deviations

36. 40 C.F.R. § 68.69(a)(2)(ii) provides that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address, among other things, steps required to correct or avoid deviations.

37. The PHH #2 Furnace is part of the PHH Unit.

38. The PHH Unit is a “covered process” as that term is defined by 40 C.F.R. § 68.3.

39. On or about December 20, 2013, the Respondent attempted to restart the PHH #2 Furnace following a trip condition.

40. An over-firing condition occurred during the attempted restart of the PHH #2 Furnace following a trip condition.

41. On or about December 20, 2013, a fire occurred at the PHH # 2 Furnace during an attempted restart of the PHH #2 Furnace.

42. The fire resulted in the release of approximately 2400 pounds of vinyl chloride and approximately 130,000 pounds of hydrogen chloride (anhydrous) [hydrochloric acid].

43. The fire resulted in approximately \$8,000,000 of on-site property damage.

44. According to information the Respondent obtained from third parties, the fire resulted in the following off-site impacts:

- a. 1 person hospitalized;
- b. 27 persons received medical treatment;
- c. 130 persons were evacuated; and
- d. approximately 5,000 persons were sheltered-in-place.

45. The safe operating envelope documents for the PHH #2 Furnace did not contain criteria/preventive action for furnace over-firing scenarios.

46. Therefore, the Respondent violated 40 C.F.R. § 68.69(a)(2)(ii) by failing to develop and implement operating procedures for PHH #2 Furnace which included steps required to correct or avoid the deviations.

Count Three – Failure to Inspect Pipe in PIII Unit

47. 40 C.F.R. § 68.73(a) provides that the requirements of 40 C.F.R. § 68.73(d) applies to the following process equipment:

- A. Pressure vessels and storage tanks;
- B. Piping systems (including piping components and valves);
- C. Relief and vent systems and devices;

- D. Emergency shutdown systems;
- E. Controls (including monitoring devices and sensors, alarms, and interlocks); and
- F. Pumps.

48. 40 C.F.R. § 68.73(d) provides the following:

- (1) Inspections and tests shall be performed on process equipment.
- (2) Inspection and testing procedures shall follow recognized and generally acceptable good engineering practices.
- (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.

49. The 2" Quench Dopp Overhead (QDOH) return line near the Quench Tower is part of the PHH Unit.

50. The PHH Unit is a "covered process" as that term is defined by 40 C.F.R. § 68.3.

51. On or about November 4, 2012, a leak was observed in a weld on the 2" QDOH return line near the Quench Tower.

52. On or about November 4, 2012, a temporary clamp was placed over the leak on the 2" QDOH return line near the Quench Tower.

53. On or about November 12, 2012, an engineered clamp was placed over the leak on the 2" QDOH return line near the Quench Tower.

54. On or about November 28, 2012, the Respondent repumped the engineered clamp on the 2" QDOH return line near the Quench Tower.

55. On or about December 24, 2012, a fire occurred in the PHH production area.

56. The fire resulted in the release of approximately 15,000 pounds of vinyl chloride.

57. The fire resulted in the following on-site impacts:

- a. 1 person injured; and
- b. approximately \$3,900,000 of on-site property damage.

58. The Respondent's investigation of the fire focused on the breached 2" QDOH return line near the Quench Tower.

59. Ultrasonic Thickness (UT) readings taken on the piping after the December 24, 2012 fire indicated a general thinning of the line with some localized areas of accelerated thinning.

60. The 2" QDOH return line near the Quench Tower was not adequately inspected.

61. Therefore, the Respondent violated 40 C.F.R. § 68.73(d) by failing to adequately inspect the 2" QDOH return line near the Quench Tower.

Count Four – Failure to Conduct Mechanical Integrity Inspections of Certain Pipes

62. 40 C.F.R. § 68.73(a) provides that the requirements of 40 C.F.R. § 68.73(d) applies to the following process equipment:

- A. Pressure vessels and storage tanks;
- B. Piping systems (including piping components and valves);
- C. Relief and vent systems and devices;
- D. Emergency shutdown systems;
- E. Controls (including monitoring devices and sensors, alarms, and interlocks); and
- F. Pumps.

63. 40 C.F.R. § 68.73(d) provides the following:

- (1) Inspections and tests shall be performed on process equipment.
- (2) Inspection and testing procedures shall follow recognized and generally acceptable good engineering practices.
- (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.

64. As of May 9, 2013, the Respondent failed to inspect 2255 pipes at one or more of the covered processes identified in Paragraphs 17, 19, and 21.

65. Therefore, the Respondent violated 40 C.F.R. § 68.73(d) by failing to conduct inspections of certain pipes at certain covered processes.

Count Five – Failure to Conduct Certain Mechanical Integrity Inspections of Pressure Vessels

66. 40 C.F.R. § 68.73(a) provides that the requirements of 40 C.F.R. § 68.73(d) applies to the following process equipment:

- A. Pressure vessels and storage tanks;
- B. Piping systems (including piping components and valves);
- C. Relief and vent systems and devices;
- D. Emergency shutdown systems;
- E. Controls (including monitoring devices and sensors, alarms, and interlocks); and
- F. Pumps.

67. 40 C.F.R. § 68.73(d) provides the following:

- (1) Inspections and tests shall be performed on process equipment.
- (2) Inspection and testing procedures shall follow recognized and generally acceptable good engineering practices.
- (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.

68. As of May 9, 2013, the Respondent failed to conduct remaining life calculations for 319 pressure vessels at one or more of the covered processes identified in Paragraphs 17, 19, and 21.

69. The remaining life calculations identified in Paragraph 68 is required by API 510.

70. The remaining life calculations in API 510 is a recognized and generally acceptable good engineering practice.

71. Therefore, the Respondent violated 40 C.F.R. § 68.73(d) by failing to conduct certain types of tests and inspections of certain pressure vessels at certain covered processes.

Count Six – Failure to Update Process Hazard Analysis Every Five Years

72. 40 C.F.R. § 68.67(f) provide that at least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated

by a team meeting the requirements in 40 C.F.R. § 68.67(d), to assure that the process hazard analysis is consistent with the current process.

73. The S. Liq. Cl₂ Compression Process is part of the South Liquefaction (Chlor-Alkali) (excluding Brine Treatment) process.

74. The South Liquefaction (Chlor-Alkali) (excluding Brine Treatment) process is a “covered process” as that term is defined by 40 C.F.R. § 68.3.

75. The Respondent updated the process hazard analysis for the S. Liq. Cl₂ Compression Process on September 13, 2007.

76. The Respondent was required to update the process hazard analysis for the S. Liq. Cl₂ Compression Process by September 13, 2012.

77. The Respondent failed to update the process hazard analysis for the S. Liq. Cl₂ Compression Process until March 13, 2013.

78. Therefore, the Respondent violated 40 C.F.R. § 68.67(f) by failing to update the process hazard analysis for the S. Liq. Cl₂ Compression Process until March 13, 2013.

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

79. For the reasons set forth above, the Respondent has agreed to pay a civil penalty of **Eight Hundred Seventy-Seven Thousand, Nine Hundred Ninety-Two Dollars (\$877,992)**.

80. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier’s check, or wire transfer, made payable to “Treasurer, United States of America, EPA - Region 6”. Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire

transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check should be remitted to:

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

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

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency" with a phone number of (412) 234-4381".

PLEASE NOTE: Docket Number CAA-06-2015-3337 shall be clearly typed on the check or other method of payment to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such

payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Sherronda Phelps
Environmental Engineer
Surveillance Section – Houston Lab (6EN-ASH)
U.S. EPA, Region 6 Laboratory
10625 Fallstone Rd
Houston, TX 77099

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

The Respondent's adherence to this request will ensure proper credit is given when the penalty is received in the Region.

81. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

82. If the Respondent fails to submit payment within thirty (30) days of the effective date of this CAFO, the Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties as set forth below.

83. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury

tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

84. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

85. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

86. This CAFO will be considered a "prior violation" for the purpose of demonstrating a "history of noncompliance" under the Clean Air Act Stationary Source Penalty Policy, and the Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (June 2012).

B. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

87. The Respondent shall conduct the following supplemental environmental projects (SEPs):

A. Hydrogen Chloride Leak Detection and Repair (HCl LDAR) SEP.

1. The Respondent shall use the Rebellion Photonics Gas Cloud Imaging (GCI) system to monitor the PHH Unit for hydrogen chloride (HCl) leaks on a monthly basis. The monitoring will be conducted pursuant to a written leak detection system and repair (LDAR) program, which is attached as Exhibit A and incorporated by reference into this CAFO.

2. The Respondent shall implement the HCl LDAR SEP in accordance with Exhibit A, within ninety (90) days of the effective date of this CAFO.

3. The Respondent shall implement the HCl LDAR SEP for a period of three years from the date the program commences.

4. The Respondent shall submit Semi-Annual Monitoring Reports to EPA. The Reports will contain the following information:

- a. Equipment monitored;
- b. Date(s) of monitoring;
- c. Location, date, and time HCl leak(s) detected;
- d. Location, date, and time HCl leak(s) confirmed repaired;
- e. Location, date, and time HCl leak(s) placed on Delay of Repair, if any, reason HCl leak could not be repaired, and date of the next process unit shutdown;
- f. Dates of any process unit shutdowns; and
- g. Any deviations from the program.

5. The Respondent shall submit the Semi-Annual Monitoring Reports to EPA on February 1 of each year (covering the previous sixth month period from June 1 – December 31), and on August 1 of each year (covering the previous six month period from January 1 – June 30).

6. The Respondent shall submit the following certification in the Semi-Annual Monitoring Reports, signed by a responsible corporate official:

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, I believe that 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.

7. The Respondent agrees that the failure to timely submit the Semi-Annual Monitoring Reports to EPA shall be deemed a violation of this CAFO and the Respondent shall be liable for stipulated penalties pursuant to Paragraph 99.F.

8. The Respondent shall submit copies of the video monitoring documentation of HCl leaks to EPA upon request. The Respondent shall keep a copy of the video monitoring documentation of HCl leaks until this CAFO is terminated.

B. Emergency Equipment Donation SEP.

1. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondent shall purchase and donate the following equipment for the Moss Bluff Fire Department:

a. Two (2) Toughbook Laptop computers, which will allow the fire department to enable enroute fire engines to have access to preplan information location maps with water supply details.

b. Firehouse Cloud Software, which will able mobile users to access the software currently used by the fire department for all record keeping.

c. Two (2) MSA Altair 5 Multi Gas Detectors. These detectors test levels of combustible gases in lower explosive limit (LEL) and/or volume percentage range, oxygen, carbon monoxide, carbon dioxide, hydrogen sulfide, sulfur dioxide, ammonia,

chlorine, and other gases, depending on sensor configuration. The detectors are equipped with MotionAlert™, which lets others know if the user has become immobile, and InstantAlert™, a manual alarm that alerts others if a dangerous situation has arisen.

d. One (1) MSA Altair Multi Gas Detector Docking Station.

88. The Respondent is responsible for the satisfactory completion of the SEPs. The total expenditure for the SEP described in Paragraph 87.A shall be no less than \$108,000, and the total expenditure for SEP described in Paragraph 87.B shall be no less than \$11,000. The Respondent hereby certifies that the cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate, and that the Respondent in good faith estimates that the cost to implement the HCl LDAR SEP is \$108,000, and the cost to implement the Emergency Equipment Donation SEP is \$11,000. Eligible SEP costs do not include inventory on hand, overhead, additional employee time and salary, administrative expenses, legal fees, and oversight of a contractor. The Respondent shall include documentation of the expenditures made in connection with each SEP as part of the respective SEP Completion Report.

89. The Respondent hereby certifies that as of the date of this CAFO, the Respondent is not required to perform or develop the SEPs by any federal, state or local law or regulation; nor is the Respondent required to perform or develop the SEPs by any other agreement, grant, or as injunctive relief in this or any other case. The Respondent further certifies that the SEPs were not projects that the Respondent was planning or intending to construct, perform, or implement other than in settlement of this action. Finally, the Respondent certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for these SEPs, and that the Respondent will not receive reimbursement for any portion of the SEPs from another person or entity.

90. The Respondent also certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEPs described in Paragraph 87, and that it has inquired of [SEP recipient and/or SEP implementer] whether either is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEPs and has been informed by the [recipient and/or the implementer] that neither is a party to such a transaction.

91. Any public statement, oral or written, in print, film, or other media, made by the Respondent making reference to the SEPs under this CAFO from the date of its execution of this CAFO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action against Eagle U.S. 2, LLC, taken on behalf of the EPA to enforce federal laws."

92. For federal income tax purposes, the Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs.

SEP Completion Report

93. The Respondent shall submit a SEP Completion Report to EPA within thirty (30) days after completion of each SEP. The SEP Completion Report shall contain the following information:

- A. A detailed description of the SEP as implemented;
- B. A description of any operating or logistical problems encountered and the solutions thereto;
- C. Itemized final costs with copies of receipts for all expenditures;
- D. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and

E. A description of the environmental, emergency preparedness, and/or public health benefits resulting from implementation of this SEP.

94. The Respondent agrees that failure to timely submit the final SEP Completion Reports to EPA shall be deemed a violation of this CAFO and the Respondent shall become liable for stipulated penalties pursuant to Paragraph 99.F.

95. In itemizing its costs in the SEP Completion Reports, the Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Reports include costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

96. The Respondent shall submit the following certification in the SEP Completion Reports, signed by a responsible corporate official:

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, I believe that 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.

97. After receipt of the SEP Completion Reports described in Paragraph 93 above, EPA will notify the Respondent, in writing, regarding: (a) any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (b) indicate that EPA concludes that the project has been completed satisfactorily; or (c)

determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 99 below.

98. If EPA elects to exercise option (a) in Paragraph 97 above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself. EPA shall permit the Respondent the opportunity to object in writing to the notification of deficiency given pursuant to Paragraph 97 within ten (10) days of receipt of such notification. EPA and the Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon the Respondent. The Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. In the event the SEP is not completed as reasonably contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 99 herein.

Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-On Amount

99. In the event that the Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEPs described in Paragraph 87 of this CAFO and/or to the extent that the actual expenditures for the SEPs do not equal or exceed the cost of the SEPs described in Paragraph 88 above, the Respondent shall be liable for stipulated penalties according to the provisions set forth below:

A. Except as provided in subparagraph (B) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, the Respondent shall pay a stipulated

penalty to the United States in the amount of \$79,558 (100% of the amount the penalty was mitigated) for the HCl LDAR SEP, and \$8,800 (100% of the amount the penalty was mitigated) for the Emergency Equipment Donation SEP.

B. If the SEPs are not completed in accordance with Paragraphs 87 - 88, but EPA determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, the Respondent shall not be liable for any stipulated penalty.

C. If the SEPs are completed in accordance with Paragraphs 87 - 88, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, the Respondent shall pay a stipulated penalty to the United States in the amount of \$39,779 [50% of the amount the penalty was mitigated (\$79,558)] for the HCl LDAR SEP, and pay a stipulated penalty to the United States in the amount of \$4,400 [50% of the amount the penalty was mitigated (\$8,800)] for the Emergency Equipment Donation SEP.

D. If the SEP is completed in accordance with Paragraphs 87 - 88 and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, the Respondent shall not be liable for any stipulated penalty.

E. If the Respondent fails to timely complete a SEP for any reason, the Respondent shall pay stipulated penalties as follows:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 1,000
16th through 30th day	\$ 1,500
31st day and beyond	\$ 2,500

F. For failure to timely submit a Semi-Annual Monitoring Report required by Paragraph 87.A or SEP Completion Report required by Paragraph 93 above, the Respondent shall pay a stipulated penalty in the amount of \$500 for each day after the report was originally due, until the report is submitted.

100. The determinations of whether a SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

101. Stipulated penalties for Paragraphs 99.E and 99.F above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

102. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 80 herein. Interest and late charges shall be paid as stated in Paragraphs 83 - 84 herein.

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

C. NOTIFICATION

104. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other party that another individual has been designated to receive the communication:

Complainant:

Sherronda Phelps
Environmental Engineer
Surveillance Section – Houston Lab (6EN-ASH)
U.S. EPA, Region 6 Laboratory
10625 Fallstone Rd
Houston, TX 77099

Respondent:

Esther Liggio
Environmental Manager
Eagle US 2 LLC
1300 PPG Drive
Westlake, LA 70669

D. COMPLIANCE

105. The Respondent hereby certifies that as of the date of the execution of this CAFO, that it has corrected the violations alleged herein. The Respondent has retained an independent third-party to conduct the triennial compliance audit required by 40 C.F.R. § 68.79, which commenced on October 6, 2015 and is anticipated to be complete by November 30, 2015. The Respondent will provide the final audit report to EPA on or before January 31, 2016.

E. MODIFICATION

106. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and the Respondent, and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

F. RETENTION OF ENFORCEMENT RIGHTS

107. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

108. Nothing in this CAFO shall relieve the Respondent of the duty to comply with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

109. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility whether related to the violations addressed in this CAFO or otherwise. Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

110. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. In any such action to enforce the provisions of this CAFO, the Respondent shall not assert, and may not maintain, any defense of laches, statute of limitations, or any other equitable defense based on the passage of time. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under the Clean Air Act or its implementing regulations, or under other federal or state laws, regulations, or permit conditions.

111. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, to enforce the provisions of this CAFO, or other appropriate relief relating to this Facility, the Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the

subsequent proceeding were or should have been brought in the instant case, except with respect to claims for civil penalties that have been specifically resolved pursuant to this CAFO.

112. The Respondent waives any right it may possess at law or in equity to challenge the authority of the EPA or the United States to bring a civil action in a United States District Court to compel compliance with this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action. The Respondent also consents to personal jurisdiction in any action to enforce this CAFO in the appropriate Federal District Court.

113. The Respondent also waives any right of judicial review of this action under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

114. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondent's compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of the Clean Air Act or with any other provisions of federal, State, or local laws, regulations, or permits.

G. COSTS

115. Except as provided in Paragraph 85, each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

H. TERMINATION

116. At such time as the Respondent believes it is in compliance with all of the requirements of this CAFO, it may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondent has been notified by the EPA in writing that this CAFO has been satisfied and terminated.

I. EFFECTIVE DATE

117. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

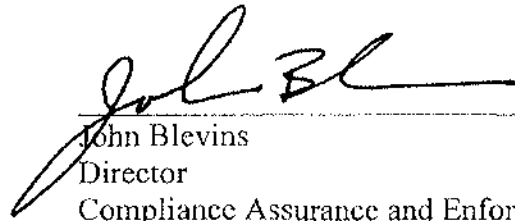
FOR THE RESPONDENT:

Date: 10/23/15

Curtis Tucker
Eagle US 2 LLC

FOR THE COMPLAINANT:

Date: 11.2.15

A handwritten signature in black ink, appearing to read "John Blevins", is written over a horizontal line. The signature is stylized and cursive.

John Blevins
Director
Compliance Assurance and Enforcement
Division
EPA – Region 6

FINAL ORDER

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

Date: 11/3/15



Thomas Rucki
Regional Judicial Officer

EXHIBIT A

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Work Practice HCL Monitoring Plan

Description of Imaging Equipment and Specifications Eagle US 2 LLC ("Eagle") shall contract with Rebellion Photonics to use the Rebellion Photonics Gas Cloud Imaging (GCI) system to monitor the VC Production ("PHH") Unit for hydrogen chloride (HCl) leaks on a monthly basis as described herein.

Instrument Calibration and Checks - The instrument will be calibrated and maintained in accordance with the recommendations of the manufacturer/supplier. Eagle will require the contractor to maintain records of calibration and maintenance of the equipment during the duration of the SEP.

Equipment to be monitored

Monitoring will be done within the battery limits of the VC Production (PHH) Chemical Manufacturing Process Unit (CMPU). Specific equipment in anhydrous hydrogen chloride (HCl) gas service within the PHH CMPU will be identified. A set of P&IDs marked with the equipment to be monitored will be prepared and made available to the imaging operator. A monitoring route will be established to monitor the identified equipment. The route will include transfer piping from one process area to another within the CMPU. Where obstructions of the process equipment or piping exist, best effort will be made to obtain optimal viewing angles to detect leaks. Note that it is not necessary to have direct line of sight to all equipment to detect leaks.

Monitoring Frequency

Eagle will monitor the defined route monthly for a period of 36 months. Eagle may perform the monitoring at any time during each month, provided the task is conducted at a reasonable interval after completion during the previous month. The first monitoring event will be no later than ninety (90) days following the effective date of the CAFO. There will be no skip periods unless: 1) safety related concerns prevent monitoring during the specified time period; 2) if the imaging system is unavailable from the selected contractor, (beyond Eagle's control); or 3) in a month with planned or unplanned extended (>7 days) outages. Planned extended outages only occur once every 2-3 years. Any such occurrences will be documented and reported in the semi-annual reports.

Optical imaging will not displace any inspections required under 40 C.F.R. Part 68 or any other federal or state applicable requirement.

Leak Survey Procedure

Rebellion Photonics' Gas Cloud Imager™ (GCI) combines mid-wave infrared detection (3-5um) with hyperspectral imaging in the long wavelength infrared (7-14um) so that it is not only

sensitive to Hydrogen Chloride but can discriminate HCl from false detection sources such as Vinyl Chloride, Ethylene Dichloride, and steam. The GCI acquires, analyzes, and displays video in real-time with false color overlays showing the gas type, concentration, and leak location. The GCI camera monitors changes in the light from a scene and compares them to a library of gas spectra. The following is the definition of an HCl leak:

An HCl leak detection occurs when the spectra closely replicates the known HCl spectral signature and the detection exhibits gas-like motion behavior as distinguished from any static thermal differences the camera may see.

The contractor will operate the optical gas imaging instrument to image equipment in HCL gas service from the designated survey route in accordance with the instrument manufacturer's operating parameters. All emissions imaged by the optical gas imaging instrument that meet the definition of an HCl leak stated above are considered to be leaks and are subject to the repair protocol below. All emissions visible to the naked eye from equipment in HCl gas service are also considered to be HCl leaks and are subject to repair.

Eagle will document detected HCl leaks by noting the location, date and time the leak is detected. Records of leaks, leak repair attempts, and repairs will be maintained for a period until 12 months after the last monitoring event. If video recording is used to document a leak, a time and date stamp for each HCl leak identified will be included and the video recording documenting the HCl leak will be retained for the duration of this SEP.

Repair Protocol

A first attempt will be made as soon as practicable, within 5 working days, for HCl leaks. If a first attempt is unsuccessful, final repair will be completed within 15 working days. Delay of Repair will be allowed where 1) repair is technically infeasible without a process unit shutdown, or 2) where emissions related to the repair would exceed those of the resulting from delay of repair.

Repair will be confirmed initially using Audio, Visual, or Olfactory ("AVO") means or other leak detection techniques, such as leak check liquid (e.g., "soap bubble" like test), where practicable and safe. Confirmatory imaging will be performed during the next routine monthly survey, except for the last monitoring event in the 36 month period, where AVO or other applicable methods will be used. The previous video of a HCl leak will be reviewed to verify location. If an HCl leak is still detected, the facility will initiate repair requirements anew.

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of November, 2015, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by certified mail, return receipt requested 7006 0810 0005 9535 9332:

Maureen Harbourt
Kean Miller LLP
400 Convention Street
Suite 700
Baton Rouge, LA 70802

