

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 4

In the Matter of:

ISP Chemicals LLC,

Respondent.

Docket No. **CAA-04-2020-0201(b)**

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7413(d), and Sections 22.13(b) and 22.18 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 Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (“EPA”), Region 4, who has been delegated the authority on behalf of the Administrator of the United States Environmental Protection Agency (EPA) to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 113(d) of the Act.
5. Respondent is ISP Chemicals LLC, a limited liability company doing business in the Commonwealth of Kentucky. This proceeding pertains to Respondent’s facility located at 455 North Main Street, Calvert City, Kentucky 42029 (Facility).

III. GOVERNING LAW

6. Any person who violates Section 112(r) of the CAA, 42 U.S.C. § 7412(r), or rule promulgated thereunder, may be assessed a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19. Each day a violation continues may constitute a separate violation. Civil penalties under Section 113(d) of the Act, 42 U.S.C. § 7413(d), may be assessed by an administrative order.
7. Section 112(r) of the Act 42 U.S.C. § 7412(r), addresses the prevention of release of substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), and other extremely hazardous substances. The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.
8. Pursuant to Sections 112(r)(3) and 112(r)(7) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 C.F.R. Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the “Risk Management Program” (RMProgram) and apply to an owner or operator of a stationary source that has a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.
9. Pursuant to Section 112(r)(7)(B)(iii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 C.F.R. §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a “process” as defined in 40 C.F.R. § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.

IV. FINDINGS OF FACTS

10. Respondent is the owner and/or operator of the Facility, which is a “stationary source” as that term is defined by Section 112(r)(2)(C) of the Act, 42 U.S.C. § 7412(r)(2)(C).
11. Respondent has registered an RMPlan with the EPA for its Facility and has developed an RMProgram accidental release prevention program for the Facility.
12. On July 6, 2020, the EPA issued to Respondent a Notice of Potential Violation (“NOPV”), providing notice that the EPA found that Respondent potentially committed the alleged violations described in Section V of this Agreement and providing Respondent an opportunity to confer with the EPA. On August 18, 2020, representatives of Respondent and the EPA held a meeting to discuss the NOPV.

13. At its Facility:

- a. Respondent operates chemical manufacturing processes.
- b. Respondent has on-site for use 1,400,000 pounds of vinyl methyl ether, 260,000 pounds of ammonia, and 130,000 pounds of cyclohexylamine.
- c. Respondent has RMProgram level 3 covered processes, which store or otherwise use vinyl methyl ether, ammonia, and cyclohexylamine in amounts exceeding their applicable thresholds of 10,000 pounds, 10,000 pounds, and 15,000 pounds, respectively.
- d. On July 23, 2019 – July 25, 2019, the EPA conducted an on-site inspection of the RMProgram related records and equipment for the purpose of assessing the Respondent's compliance with the RMProgram requirements and the implemented recognized and generally accepted good engineering practices (RAGAGEP) for its covered processes at its Facility.

14. At the time of the inspection, the documented process safety information (PSI) "Process Safety Information: Building 211 Sub Py Unit; Updated: 3/15/2015" for the substituted pyrrolidones process was missing a safe upper limit value for a trip/alert point for a high-level alarm.

15. When the inspection team compared the piping and instrument diagram (P&IDs) with the process equipment in the field, the following inaccuracies were observed:

- a. Ammonia storage tank (tank 335/3101) P&ID (D-C335-1001; Rev. 37):
 - i. The P&ID incorrectly showed the placement of thermal well (TW) and temperature transmitter (TT) 0002, pressure transmitter (PT) 0018, and pressure safety valve (PSV) 0006 on Line 3"-AL-104- 3L1-C leading from the bottom of the tank to the ammonia pumps 335/3901 and 335/3902. The P&ID showed these instruments and devices in the order of PSV-0006, PT-0018, and TW/TT-0002 from upstream to downstream. However, the EPA inspection team observed the placement order to be TW/TT-0002, PT-0018, and PSV-0006 from upstream to downstream.
 - ii. The P&ID incorrectly showed the placement of the unlabeled pressure gauge (PG) on line 1-1/2"-AL-105-3L1-N. The P&ID showed the PG upstream of the junction of the discharges of the two pumps, but the EPA inspection team observed the PG downstream of the junction of the discharges of the two pumps, upstream of flow element (FE) / flow transmitter (FT) 0003.
 - iii. At the top of the tank, the EPA inspection team observed a 3/4"-line with a valve and line connector that was upstream of PT-0002 and was not shown on the P&ID.

- b. Substituted pyrrolidones reaction section (211/3303 & 3305) P&ID (D- C211-1001; Rev. 29):
 - i. The P&ID incorrectly showed the placement of PSV-0050, PSV- 0049A, and PSV-0049B. The P&ID showed the placement order to be PSV-0050, PSV-0049B, and PSV-0049A from upstream to downstream. However, the EPA inspection team observed the placement order to be PSV-0050, PSV-0049A, and PSV-0049B from upstream to downstream.
 - ii. The P&ID showed a local PG, PG-0049B, upstream of PSV- 0049B. However, the EPA inspection team did not observe PG- 0049B in the field.
 - iii. The P&ID stated that PSVs in this section relieved “To Atm at a safe location.” However, these PSVs relieved at an adjacent pipe rack, which is not a safe location.
- c. Substituted pyrrolidones condenser and surge tank (211/3879, 3216) P&ID (D-C211-1006; Rev. 27):
 - i. The P&ID stated that the PSV on the accumulator (211/3887) overhead line, 211PSV-6220 relieved “to safe location.” However, this PSV relieved at ground level, which is not a safe location.

16. The documented PSI “Process Safety Information: Building 211 Sub Py Unit; Updated: 3/15/2015” for the substituted pyrrolidones process was missing some relief system design bases. The sizing basis was missing and listed as “TBD” for the following PSVs: PSVs-0045A, 0045B, 0046, 0047, 0049A, 0049B, and 0050.

17. The inspection team observed the following equipment, that did not comply with RAGAGEP:
- a. The EPA inspection team observed PSVs 211PSV-0022 and 211PSV-0022A on the substituted pyrrolidones reactor effluent line to relieve towards an adjacent pipe rack and the PSV 211PSV-6220 (on the substituted pyrrolidones accumulator) to relieve at grade from a pipe opening no greater than approximately two inches above the ground, neither of which met the following standard: ASME Boiler and Pressure Vessel Code (BPVC) Section VIII Division 1: Rules for Construction of Pressure Vessels; - 2017; Section UG-135(f), which states: *“Discharge lines from pressure relief devices shall be designed to facilitate drainage or shall be fitted with drains to prevent liquid from lodging in the discharge side of the pressure relief device, and such lines shall lead to a safe place of discharge. The size of the discharge lines shall be such that any pressure that may exist or develop will not reduce the relieving capacity of the pressure relief devices below that required to properly protect the vessel, or adversely affect the proper operation of the pressure relief devices.”*
 - b. The ammonia storage tank (335/3101) did not have the required marking on at least two sides. ANSI/CGA G-2.1-2014, Section 6.6 states, *“Each container or group of containers shall be marked on at least two sides, which are visible with the words, ANHYDROUS AMMONIA, or CAUTION-AMMONIA, in sharply contrasting colors with letters not less than 3.9 in (100 mm) high.”*
 - c. The piping associated with the ammonia storage tank (335/3101) did not display a consistent system of labeling and coloring as specified in ASME A13.1-2015.

18. The EPA inspection team reviewed the “Sub-Py Area 211 Process Hazard Analysis” (PHA) conducted in October 2014 (report dated April 17, 2015). The Facility siting checklist portion of the PHA identified that PSVs 211PSV-0022A and 211PSV-0022 relieved at a pipe bridge (another term for a pipe rack) and that PSV 211PSV-6220 relieved at ground level. These findings were given a risk level “next opportunity” for resolution. The PHA recommendations tracking sheet “Risk Action Progress” marked these actions as “closed.” However, the EPA inspection team observed in the field that PSVs 211PSV-0022 and 211PSV-0022A still relieved at the pipe bridge and 211PSV-6220 still relieved at ground level. The recommendations were not implemented and were overdue.

V. ALLEGED VIOLATIONS

19. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

20. Based on EPA’s compliance monitoring investigation, the EPA alleges that the Respondent violated 40 C.F.R. Part 68, the codified rules governing the Act’s Chemical Accident Prevention Provisions and Section 112(r) of the Act, 42 U.S.C. § 7412(r), when it:

- a. Failed to compile written PSI for the technology of the process which included safe upper and lower limits for such items as temperatures, pressures, flows or compositions as required by 40 C.F.R. § 68.65(c)(1)(iv);
- b. Failed to compile written PSI for the equipment in the process which included a P&ID as required by 40 C.F.R. § 68.65(d)(1)(ii);
- c. Failed to compile written PSI for the equipment in the process which included relief system design and design basis as required by 40 C.F.R. § 68.65(d)(1)(iv);
- d. Failed to document that equipment complies with RAGAGEP as required by 40 C.F.R. § 68.65(d)(2); and
- e. Failed to establish a system to promptly address the team’s findings and recommendations; assure that the recommendations were resolved in a timely manner, and that the resolution was documented; document what actions were to be taken; and complete actions as soon as possible; develop a written schedule of when these actions were to be completed; and communicate the actions to operating, maintenance and other employees whose work assignments were in the process and who may have been affected by the recommendations or actions as required by 40 C.F.R. § 68.67(e).

VI. STIPULATIONS

21. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

22. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
- b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the conditions specified in this CAFO;

- e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
- f. waives its rights to appeal the Final Order accompanying this CAFO.

23. For the purpose of this proceeding, Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- d. by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
- e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
- f. agrees to comply with the terms of this CAFO.

24. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

25. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **\$26,872** which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.
26. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station: SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contact: John Schmid, (202) 874-7026
REX (Remittance Express): 1-866-234-5681

27. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
R4_Regional_Hearing_Clerk@epa.gov

and

Jordan Noles
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
Noles.jordan@epa.gov

28. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and Docket No. **CAA-04-2020-0201(b)**.

29. Pursuant to 42 U.S.C. § 7413(d)(5), if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may recover in addition to the amount of the unpaid penalty assessed, the following amounts on any amount overdue:

- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 days of the Effective Date of this CAFO, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed at rates established pursuant to 26 U.S.C. § 6621(a)(2).
- b. Non-Payment Penalty. A 10 percent quarterly nonpayment penalty pursuant to 42 U.S.C. § 7413(d)(5).

- c. Attorneys' Fees and Costs of Collection. The United States enforcement expenses, including, but not limited to, attorneys' fees and cost of collection.
30. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:
- a. Refer the debt to a credit reporting agency or a collection agency pursuant to 40 C.F.R. §§ 13.13 and 13.14;
 - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;
 - c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
 - d. Request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed, in addition to the amounts described above, pursuant to 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.
31. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

32. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
33. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
34. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
35. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
36. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.

37. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
38. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
39. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
40. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
41. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
42. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
43. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
44. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA. If such false or inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
45. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
46. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

IX. EFFECTIVE DATE

47. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

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Complainant and Respondent will Each Sign on Separate Pages

The foregoing Consent Agreement In the Matter of **ISP Chemicals LLC, Docket No. CAA-04-2020-0201(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Brett S. Bierbaum

1/15/2021

Signature

Date

Printed Name: Brett S. Bierbaum

Title: Plant Manager

Address: 455 N Main, Calvert City, KY 42029

The foregoing Consent Agreement In the Matter of **ISP Chemicals LLC, Docket No. CAA-04-2020-0201(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Carol L. Kemker, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

ISP Chemicals LLC,

Respondent.

Docket No. CAA-04-2020-0201(b)

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of **ISP Chemicals LLC**, **Docket No. CAA-04-2020-0201(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent: Tim Whitaker, Environmental Manager
ISP Chemicals LLC
twhitaker@ashland.com
(270) 395-1480

Robin Lampkin, Assistant General Counsel
ISP Chemicals LLC
Relampkin@ashland.com

455 North Main Street
Calvert City, Kentucky 42029

To EPA: Jordan Noles, Case Development Officer
noles.jordan@epa.gov
(404) 562-9105

Michiko Kono, Attorney-Adviser
kono.michiko@epa.gov
(404) 562-9558

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61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Saundi J. Wilson, Regional Hearing Clerk
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61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960