

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2014 SEP 13 PM 1:24
REGIONAL OFFICE
EPA REGION VI

IN THE MATTER OF:)
)
Sasol Chemicals (USA) LLC)
)
Westlake, LA) DOCKET NO. CAA 06-2014-3527
)
RESPONDENT)
)
)
)
)

CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency (EPA), Region 6, and Sasol Chemicals (USA) 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 pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO against the Respondent 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 herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. 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 resolve Respondent's liability for federal civil monetary penalties for the violations and facts alleged in this CAFO.

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

6. The Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

7. The Respondent agrees that the provisions of this CAFO shall be binding on its successors and assigns.

II. STATUTORY AND REGULATORY BACKGROUND

8. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), provides in pertinent part:

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

* * * *

(B) (ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the

stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection.

9. In accordance with Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), EPA promulgated the Chemical Accident Prevention Provisions, which are codified at 40 C.F.R. Part 68. These regulations, commonly referred to as the “Risk Management Program” (RMP) regulations, contain requirements for owners or operators of stationary sources concerning the prevention of accidental chemical releases.

10. Pursuant to 40 C.F.R. § 68.10, the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the RMP regulations.

11. Pursuant to 40 C.F.R. § 68.12, the owner or operator of a stationary source with a process subject to the “Program 3” requirements of the RMP regulations must, among other things, comply with the prevention requirements of 40 C.F.R. Part 68, Subpart D.

12. Pursuant to Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), it is unlawful for any person to operate any stationary source subject to the Risk Management Program requirements and regulations in violation of such requirements and regulations.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

13. The Respondent is a Delaware limited liability company authorized to do business in the State of Louisiana. The Respondent’s principal place of business is located at 900 Threadneedle, Suite 100, Houston, TX 77079-2990.

14. The Respondent is a “person” as that term is defined in 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).

15. The Respondent owns and/or operates a specialty chemical manufacturing facility (North American Industrial Classification System Code 32511), located at 2201 Old Spanish Trail, Westlake, LA 70669-0727 (Facility).

16. The Respondent's specialty chemical manufacturing facility 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.

17. The Respondent is the owner and/or operator of the stationary source identified in Paragraph 15.

18. At all times relevant to this CAFO, the Respondent was engaged in, among other things, the production of specialty chemicals for detergents and cosmetics.

19. Ethylene oxide, hydrogen fluoride, 1,3-butadiene, propylene, ethane, butene, and ethylene are "regulated substances," 40 C.F.R. § 68.130.

20. The Respondent's ethoxylation and ethylene units are "processes" as that term is defined by 40 C.F.R. § 68.3.

21. At all times relevant to this CAFO, the Respondent's ethoxylation and ethylene units had Ethylene oxide, 1,3-butadiene, propylene, ethane, butene, and ethylene present above the "threshold quantity" of 10,000 pounds, as determined by 40 C.F.R. § 68.115.

22. The Respondent's ethoxylation and ethylene units are subject to Program Level 3 as defined in 40 C.F.R. § 68.10(d), and must, among other things, comply with the prevention requirements of 40 C.F.R. Part 68, Subpart D.

23. On or about July 21, 2010, an inspection of Respondent's Facility including the units identified in paragraphs 20 – 21, was conducted by representatives of EPA pursuant to Section 114 of the CAA, 42 U.S.C. § 7414 ("the Inspection").

24. Section 113(d)(1) of the CAA authorizes EPA to bring an administrative action for penalties that exceed \$295,000¹ 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 alleged violations have occurred more than twelve (12) months prior to the initiation of the administrative action.

B. VIOLATIONS

Count I - Failure to include consequences of deviation and steps required to correct or avoid deviation in its standard operating procedures

26. 40 CFR § 68.52(a) provides the following:

The owner or operator shall prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process.

In 40 CFR § 68.52(b) there is elaboration of the 52(a) requirements, specifically in Section (b)(7), which states that the procedures should include “Consequences of deviations and steps required to correct or avoid deviations.

27. When the Operating Procedures were reviewed, the inspector noted that SOPs for the Ethylene unit contained a discussion of the consequences of deviation, but not steps to avoid or correct deviations. On the other hand, SOPs for the Ethylene Oxide process addressed steps to avoid or correct deviations, but not the consequences.

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, and to \$295,000 for violations occurring after January 12, 2009.

28. Therefore, the Respondent violated 40 C.F.R. § 68.52, by failing to include all required elements in its SOPs.

Count II - Failure to accurately report the maximum intended inventory of all regulated substances in a process

29. 40 CFR § 68.160 states:

(a) The owner or operator shall complete a single registration form and include it in the RMP. The form shall cover all regulated substances handled in covered processes.

(b) The registration shall include the following data:

* * * *

(7) For each covered process, the name and CAS number of each regulated substance held above the threshold quantity in the process, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits, the five- or six-digit NAICS code that most closely corresponds to the process, and the Program level of the process

30. At the time of the inspection, the inspector observed a number of railcars containing ethylene oxide on site. Railcar storage, where storage is not incident to transportation, is defined as a covered process in 40 C.F.R. § 68.3. Respondent's RMP did not include the storage of ethylene oxide in this manner.

31. Therefore, the Respondent violated 40 C.F.R. § 68.160(b)(7), by failing accurately report the maximum intended inventory of all covered chemicals.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

32. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d), which

authorizes EPA to assess a civil penalty of up to Twenty-Five Thousand Dollars (\$25,000)² per day for each violation of the CAA. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the Penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, it is ORDERED that Respondent be assessed a civil penalty in the amount of **TWENTY FIVE THOUSAND AND 00/100 DOLLARS (\$25,000.00)**.

33. 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(s) should be remitted to:

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

² The maximum \$25,000 per day penalty was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$27,500 for violations occurring between January 30, 1997 and March 15, 2004, to \$32,500 for violations occurring between March 15, 2004 and January 12, 2009, and to \$37,500 for violations occurring after January 12, 2009.

For overnight mail (non-U.S. Postal Service, *e.g.*, Fed Ex), the check(s) 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 = 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-06-2014-3527 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 numbers 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 numbers 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:

Jeffrey M. Clay
Assistant Regional Counsel
Office of Regional Counsel
Region 6
U.S. Environmental Protection Agency
1445 Ross Avenue (Mail Code 6RC-11W)
Dallas, Texas 75202

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 penalties are received by EPA and acknowledged in the Region.

34. 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.

35. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, 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.

36. 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).

37. 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.

38. 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.

39. This Consent Agreement is considered a "prior violation" for the purpose of demonstrating a "history of noncompliance" under the Clean Air Act Stationary Source Penalty Policy.

B. RETENTION OF ENFORCEMENT RIGHTS

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

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

42. 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. Furthermore, nothing in this CAFO shall be construed 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.

C. COSTS

43. 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.

D. COMPLIANCE

44. The Respondent hereby certifies that as of the date of the execution of this CAFO, that it has corrected the violations alleged herein, and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

E. EFFECTIVE DATE

45. This CAFO becomes 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:

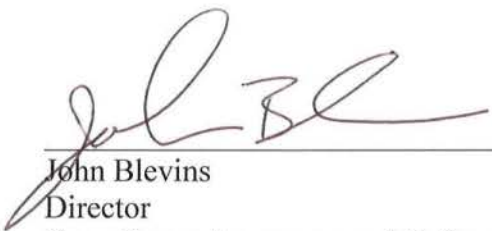
Date: August 21, 2014



Craig Lackey, Esq.
Legal Advisor
Sasol Chemicals (USA) LLC

FOR THE COMPLAINANT:

Date: 9.5.14



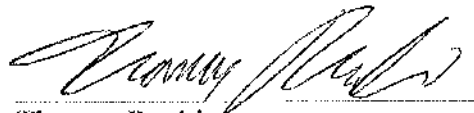
John Blevins
Director
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6

V. FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 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 or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

9/18/14



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of September, 2014, 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, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7007302000251027921

Mr. Steve Hookanson
Safety, Health, and Environmental Manager
Sasol North America Inc.
2201 Old Spanish Trail
Westlake, LA 70669-0727

and

Craig Lackey, Esq.
Legal Advisor
Sasol North America Inc.
900 Threadneedle, Suite 100
Houston, TX 77079-2990

Sandra Hardy
Paralegal
Dallas, Texas