

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
2014 MAY 21 PM 2:35  
REGIONAL HEARINGS CLERK  
EPA REGION VI

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IN THE MATTER OF:	§	DOCKET NO. CAA 06-2014-3314
	§	
SOLVAY USA INC.	§	COMPLAINT AND
	§	CONSENT AGREEMENT AND
HOUSTON, TEXAS	§	FINAL ORDER
	§	
	§	
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COMPLAINT AND  
CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 (“EPA”) (“Complainant”), and SOLVAY USA Inc. located in Houston, Texas (“Respondent” and “SOLVAY”), in the above referenced action, have agreed to resolve this matter, through issuance of this Complaint and Consent Agreement and Final Order (“Complaint” and “CAFO”).

I.  
PRELIMINARY STATEMENT

1. This proceeding is the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act, as amended (CAA or the Act), 42 U.S.C. § 7413(d), and for additional terms of settlement as agreed to by Respondent. This proceeding was instituted by the issuance of a Complaint and Notice of Opportunity for Hearing (“Complaint”) incorporated herein, and is simultaneously concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), 22.18(b)(3), and 22.34.

2. This Complaint alleges that Respondent has violated the provisions governing Chemical Accident Prevention, and specifically the requirements to maintain training records of

employees and develop appropriate operating procedures and annually certify them, which is required by 40 C.F.R. Part 68 and Section 112(r) of the Act, 42 U.S.C. § 7412(r), at its Houston, Texas facility. Furthermore, this CAFO serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this Complaint; however, Respondent neither admits nor denies the specific factual allegations contained in this Complaint.

4. Respondent waives any right to contest the allegations in the CAFO and its right to appeal the Final Order set forth herein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

6. Respondent consents to the issuance of this CAFO hereinafter recited, consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO.

7. Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this Complaint.

8. 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.

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

10. Respondent represents that the undersigned representative is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind the Respondent to the terms and conditions of this CAFO.

11. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns, but not limited to, subsequent purchasers. Nothing in the previous sentence shall adversely affect any right of EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee, even if not owned in whole or in part, directly or indirectly, by Respondent.

II.  
STATUTORY AND REGULATORY BACKGROUND

12. Pursuant to CAA § 112(r)(7), 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate release prevention, detection, and correction requirements.

13. On June 20, 1996, the EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the Act. These regulations require owners and operators of stationary sources, as defined in 40 C.F.R. § 68.3, that have more than a threshold quantity of a regulated

substance in a process no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process, to develop, implement, and submit a RMP.

14. The regulations in 40 C.F.R. Part 68 set forth the requirements for the RMP that must be followed at each applicable stationary source, including the requirements regarding operating procedures and training.

15. Pursuant to 40 C.F.R. § 68.69(a)(3)(iii-v), “(a) 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 at least the following elements... (3) Safety and health considerations: ... (iii) Control measures to be taken if physical contact or airborne exposure occurs; (iv) Quality control for raw materials and control of hazardous chemical inventory levels; and, (v) Any special or unique hazards.”

16. Pursuant to 40 C.F.R. § 68.69(c), “The operating procedures shall be reviewed as often as necessary to assure they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner and operator shall certify annually that these operating procedures are current and accurate.”

17. Pursuant to 40 C.F.R. § 68.54(a),( b): “(a) The owner or operator shall ensure that each employee presently operating a process, and each employee newly assigned to a covered process have been trained or tested competent in the operating procedures provide in § 68.52 that pertain to their duties. For those employees already operating a process on June 21, 1999, the owner or operator may certify in writing that the employee has the required knowledge, skills,

and abilities to safely carry out the duties and responsibilities as provided in the operating procedures. (b) Refresher training. Refresher training shall be provided at least every three years, and more often if necessary, to each employee operating a process to ensure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees operating the process, shall determine the appropriate frequency of refresher training.”

18. Pursuant to 40 C.F.R. § 68.71(c), “*Training documentation.* The owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by this paragraph. The owner or operator shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.”

19. “Owner or operator” shall mean any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7412(a)(9).

20. “Stationary source” shall mean 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. The term stationary source does not apply to transportation, including storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this part. A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading. 40 C.F.R. § 68.3; CAA § 112(r)(2)(C).

21. “Threshold quantity” shall mean the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Act, as amended in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source, as specified in 40 C.F.R. § 68.115. 40 C.F.R. § 68.3.

22. “Regulated substance” shall mean any substance listed pursuant to Section 112(r)(3) of the Act, as amended in 40 C.F.R. § 68.130. 40 C.F.R. § 68.3.

23. “Process” shall mean any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of 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. 40 C.F.R. § 68.3.

III.  
FINDINGS OF FACT AND CONCLUSIONS OF LAW

24. Respondent is incorporated in the state of Delaware and is authorized to do business in the State of Texas.

25. Respondent is a “person” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. §7413(d).

26. At all times relevant to this CAFO, Respondent owns and operates a chemical manufacturing facility located at 8615 Manchester Street, Houston, Texas 77012 (“Facility”).

27. Respondent is the owner and operator of a stationary source producing, handling, or storing substances listed pursuant to CAA § 112(r)(3) or extremely hazardous substances, as published and listed in the Emergency Planning and Community Right-to-know Act of 1986 [42 U.S.C.A. § 11001 et seq.].

28. The Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, apply to owners and operators of stationary sources that have more than a threshold quantity in a process of a substance listed pursuant to CAA § 112(r)(3).

29. On April 22-24, 2013, EPA conducted an onsite CAA Partial Compliance Evaluation at the Facility to verify compliance with 40 C.F.R. Part 68.

30. The violations were discovered from a review of the documents obtained during the inspection.

#### IV. VIOLATIONS

##### Count 1: Failure to certify annually that the required operating procedures are current and accurate (40 C.F.R. § 68.69(c)).

31. Respondent is subject to the Risk Management Plan (“RMP”) regulations enumerated in 40 C.F.R. Part 68.

32. 40 C.F.R. § 68.69(c) requires that operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

33. From 2008 to present, the Respondent has failed on one instance to annually certify that operating procedures were current and accurate for Unit No. 8 located at the facility.

34. Through its failure to annually certify that required operating procedures were current and accurate, Respondent has violated 40 C.F.R. §68.69(c).

Count 2: Failure to develop written operating procedures that provide clear instructions that include the required safety and health considerations

35. EPA realleges and hereby incorporates by reference Paragraphs 1-34 as referenced above.

36. 40 C.F.R. § 68.69(a)(3)(iii-v) requires, in relevant part, that the owner or operator of a facility 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 at least the following elements... (3) Safety and health considerations: ... (iii) Control measures to be taken if physical contact or airborne exposure occurs; (iv) Quality control for raw materials and control of hazardous chemical inventory levels; and, (v) Any special or unique hazards.

37. Through a review of Respondent's operating procedures for multiple units, it was observed that the procedures lacked information regarding the control measures to be taken if physical contact or airborne exposure occurs, quality control for raw materials and control of hazardous chemical inventory levels, and any special or unique hazards.

38. Through its failure to include the information listed in Paragraph 37 in its operating procedures, Respondent has violated 40 C.F.R. § 68.69(a)(3)(iii-v).

Count 3: Failure to provide proper training documentation regarding required initial and refresher training.

39. EPA realleges and hereby incorporates by reference Paragraphs 1-38 as referenced above.

40. 40 C.F.R. § 68.71(c) requires the owner or operating of a facility to ascertain that each employee involved in operating a process has received and understood the training required by 40 C.F.R. Part 68. Further the owner or operator shall prepare a record which contains the



identity of the employee, the date of training, and the means used to verify that the employee understood the training.

41. After review of the training records provided for operations in the Regeneration 2, Unit No. 8, and Logistics area of the facility, it was noted that documents provided lacked the information required to determine whether each entry is an initial training or refresher training. Means to verify that the employees understood the training was not consistent, e.g. some documents were signed and acknowledged by the employee being trained, while others were not.

42. Through its failure to include the information listed in Paragraph 40 of this complaint in its required training documentation, respondent has violated 40 C.F.R. § 68.71(c).

#### V.

#### CIVIL PENALTY AND TERMS OF SETTLEMENT

43. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), which authorizes EPA to assess a civil penalty of up to twenty-five thousand dollars (\$25,000) per day for each violation of the CAA.<sup>1</sup>

44. 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

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<sup>1</sup> The Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701 provides for increases in the statutory penalty provisions (\$25,000) cited in the Clean Air Act Stationary Source Civil Penalty Policy dated October 25, 1991 (CAA Penalty Policy). It provides for up to \$25,000 per day of violation for violations occurring on or before January 30, 1997; up to \$27,500 per day for each violation occurring after January 30, 1997 through March 15, 2004; up to \$32,500 per day for each violation occurring after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring after January 12, 2009.

noncompliance, the seriousness of the violation, specific facts and equities, litigation risks, and other factors as justice may require, it is ORDERED that Respondent be assessed a civil penalty in the amount of \$31,500.

45. Within thirty (30) days of this fully executed CAFO, Respondent shall pay \$31,500 by cashier's check, certified check, or wire transfer made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of five (5) ways: regular U.S. Postal Service mail, to include certified mail; overnight mail; wire transfer; Automated Clearinghouse for receiving US currency; or On Line Payment. For regular U.S. Postal Service 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  
PO Box 979077  
St. Louis, MO 63197-9000

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

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GI  
St. Louis, MO 63101  
Contact: Natalie Pearson  
314-418-4087

*In re* Solvay USA, Inc.  
Docket No. CAA-06-2014-3314

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 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”

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact – Jesse White (301) 887-6548

For On Line Payment:

**WWW.PAY.GOV**  
Enter sfo 1.1 in search field  
Open form and complete required fields.

PLEASE  
NOTE:

The docket number CAA 06-2014-3314 shall be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following:

Carlos Flores  
Enforcement Officer (6EN-AT)  
Toxics Enforcement Section  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue Suite 1200  
Dallas, Texas 75202-2733;

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

46. 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.

47. 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).

48. EPA will also assess a fifteen dollar (\$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 fifteen dollars (\$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.

49. Pursuant to Section 113(d)(5) of the Act, 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 ten (10) percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

50. This CAFO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of any equipment or technology installed by the Respondent in connection with any additional settlement terms undertaken pursuant to this CAFO. Nothing in this CAFO shall be construed to prohibit or prevent the federal, state, or local government from developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required.

51. This document is a "Final Order" as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of "prior such violations."

VI.  
RETENTION OF ENFORCEMENT RIGHTS

52. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of federal laws, regulations, statutes, or permitting programs.

53. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.

VII.  
COSTS

54. Each party shall bear its own costs and attorneys fees.

In re Solvay USA, Inc.  
Docket No. CAA-06-2014-~~XXXX~~  
3314

IT IS SO AGREED:

FOR THE RESPONDENT:

Date: 4/30/2014

William J. McConell

SOLVAY USA INC.

FOR THE COMPLAINANT:

Date: 5/20/14


John Blevins  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

FINAL ORDER

Pursuant to Section 113(d) of the Clean Air Act (Act), 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 this CAFO. 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 as set forth in the Consent Agreement, including the assessment of civil penalties. In accordance with 40 C.F.R. Part 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

5/20/14

  
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Regional Judicial Officer  
U.S. EPA, Region 6

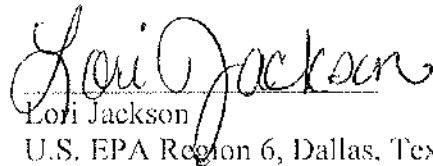


CERTIFICATE OF SERVICE

I hereby certify that on the 21 day of May, 2014, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order ("Complaint and 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 was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7007 3020 0000 1522 8021

Corporation Service Company  
Registered Agent for Respondent  
2711 Centerville Road  
Suite 400  
Wilmington, DE 19808

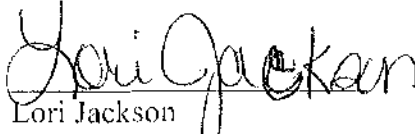
  
Lori Jackson  
U.S. EPA Region 6, Dallas, Texas

CERTIFICATE OF SERVICE

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 70073020000015228021

William McConnell  
Plant Manager  
SOLVAY USA, INC. Houston Facility  
8615 Manchester Street  
Houston, Texas 77012

  
Lori Jackson  
U.S. EPA Region 6, Dallas, Texas