

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
New Heaven Chemicals Iowa, LLC) **Docket No. CAA-07-2023-0023**
)
Respondent.)
_____)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and New Heaven Chemicals Iowa, LLC (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

2. This proceeding is an administrative action for the assessment of civil penalties initiated pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, in which the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action and/or the penalty amount is greater than the statutory limitation, was appropriate for administrative penalty action.

3. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the provisions related to prevention of accidental releases in Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 63 parts F, G, and H, promulgated pursuant to Section 112(c)(2) of the CAA, and that Respondent is therefore in violation of Section 112 of the CAA, 42 U.S.C. § 7412. Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA’s intent to issue an order assessing penalties for these violations.

Parties

4. Complainant is the Chief of the Air Branch, Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

5. Respondent is New Heaven Chemicals Iowa, LLC, a limited liability company doing business in the State of Iowa. Respondent owns and operates a chemical manufacturing facility located at 1535 380th Street, Manly, Iowa (the “Facility”).

Statutory and Regulatory Background

General Duty Clause

6. In response to growing public concern and awareness of the threats posed by accidental release of extremely hazardous substances, Congress amended the CAA in 1990 to include the accidental release provisions found in Section 112(r), 42 U.S.C. § 7412(r). The objective of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), is to prevent the accidental release, and to minimize the consequence of any such release, of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

7. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), commonly referred to as the General Duty Clause, is designed to impose a general duty on owners and operators to operate a safe facility free of accidental releases that threaten life or property by taking all feasible actions that are available to reduce hazards which are known to exist at the facility, or which have been identified for similar facilities in the same industrial group. S. Rep. No. 228, 101st Cong., 1st Sess. 208 (1989).

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

9. Pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3), EPA promulgated a list of substances, which in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. This list is codified in the code of federal regulations at 40 C.F.R. § 68.130.

10. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source” as any buildings, structures, equipment, installation or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which bare under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a

State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

12. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), defines “regulated substance” as a substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3).

13. The term “extremely hazardous substance” means an extremely hazardous substance within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Such substances include any chemical which may, as a result of short-term exposures associated with releases to the air, cause death, injury, or property damage due to its toxicity, reactivity, flammability or corrosivity. The term includes, but is not limited to, regulated substances listed in Section 112(r)(3), 42 U.S.C. § 7412(r)(3), and 40 C.F.R. 68.130. Also, the release of any substance that causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or that causes substantial property damage by blast, fire, corrosion, or other reaction would create a presumption that such substance is extremely hazardous. Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Sen. Report No. 228, 101st Congress, 1st Session 211 (1989).

14. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

National Emission Standards for Hazardous Air Pollutants

15. Section 112 of the CAA, 42 U.S.C. § 7412, authorizes the Administrator of EPA to regulate hazardous air pollutants (HAPs) that may have an adverse effect on health or the environment. Respondent is subject to several standards promulgated under Section 112 of the CAA, including 40 C.F.R. Part 63, Subparts F, G, and H. These are known as National Emissions Standards for Hazardous Air Pollutants (NESHAP) or Maximum Available Control Technology (MACT) standards.

16. 40 C.F.R. Part 63 applies to the owner or operator of any stationary source that emits or has the potential to emit any hazardous air pollutant listed in or pursuant to Section 112(b) of the CAA and is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to this part. 40 C.F.R. § 63.1(b). If a relevant standard has been established under this part, the owner or operator of an affected source must comply with the provisions of that standard and of this subpart as provided in paragraph (a)(4) of 40 C.F.R. Part 63, Subpart A. 40 C.F.R. § 63.1(c).

17. 40 C.F.R. Part 63, Subparts F, G, and H applies to chemical manufacturing processing units that: Manufacture as a primary product one or more of the chemicals listed in paragraphs (b)(1)(i) or (b)(1)(ii) of this section; (2) use as a reactant or manufacture as a product, or co-product, one or more of the organic hazardous air pollutants listed in table 2 of this subpart; and (3) are located at a plant site that is a major source as defined in section 112(a) of the Act. 40 C.F.R. § § 63.100(a) and (b).

18. 40 C.F.R. § 63.103(c) specifies that reports and records required under 40 C.F.R. Part 63, Subparts F, G, and H, be kept for a period of at least five years, unless otherwise directed by the regulation.

19. The general provisions of 40 C.F.R Part 63 apply to the Facility, including the requirement to keep records. 40 C.F.R. § 63.6(1)(iii) states that operation and maintenance requirements established pursuant to Section 112 of the CAA are enforceable independent of emissions limitations or other requirements in relevant standards.

20. 40 C.F.R. § 63.4(b) states that no owner or operator subject to the provisions of this part shall fail to keep records, notify, report, or revise reports as required under this part. 40 C.F.R. § 63.4(b).

Startup, Shutdown and Malfunction (SSM) Plan

21. 40 C.F.R. § 63.6(e)(1)(i) sets the requirements related to periods of startup, shutdown, and malfunction. 40 C.F.R. § 63.6(e)(1)(ii) states that malfunctions must be corrected as soon as practicable after their occurrence. Owners and operators must minimize emissions during SSM events. 40 C.F.R. § 63.6. Owners and operators are also required to develop a written SSM plan in accordance with 40 C.F.R. § 63.6(e)(3).

Group 1 Storage Vessel Regulations

22. 40 C.F.R. Part 63, Subpart G, applies to all process vents, storage vessels, transfer racks, wastewater streams, and in-process equipment subject to 40 C.F.R. § 63.149 within a source subject to subpart F of Part 63. 40 C.F.R. § 63.110(a). 40 C.F.R. § 63.112 sets forth the emissions standard equation that sets the required level of control for organic hazardous air pollutants (“HAPs”).

Recordkeeping

23. 40 C.F.R. § 63.152(c) and (d) require the owners or operators of the affected source to submit periodic reporting in accordance with the regulations. These include startup, shutdown, and malfunction reports required by 40 C.F.R. § 63.10(d)(5) of 40 C.F.R. Part 63, Subpart A. This also includes the periodic reports required for storage vessels related to the notifications of inspections required by 40 C.F.R. § 63.122(h)(1) and (h)(2).

24. 40 C.F.R. § 63.152(f) requires owners or operators to keep continuous records for all control equipment as specified in the regulation.

25. 40 C.F.R. § 63.123(a) requires owners/operators of Group 1 storage vessels to keep readily accessible records showing the dimension of the storage vessel and an analysis showing the capacity of the storage vessel.

Installation of Control Device and Leak Inspection Requirements

26. 40 C.F.R. § 63.143(e) specifies that for all control equipment for process wastewater at the affected source, the owner or operator shall comply with the monitoring requirements set forth in 40 C.F.R. Part 63, Subpart G, Table 13, or use a monitoring device equipped with a continuous recorder.
27. 40 C.F.R. § 63.148 sets forth the leak inspection requirements for the owner or operator of an affected facility for each vapor collection system, closed-vent system, fixed roof, cover or enclosure.
28. “Control device” means any combustion device, recovery device, or recapture device. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For process vents, recapture devices are considered control devices but recovery devices are not considered control devices, and for a steam stripper, a primary condenser is not considered a control device. 40 C.F.R. § 63.111.
29. “Group 1 storage vessel” means a storage vessel that meets the criteria for design storage capacity and stored-liquid maximum true vapor pressure specified in table 6 of Subpart G for storage vessels at new sources. 40 C.F.R. § 63.111.
30. If an owner/operator of an affected source elects to use a closed vent system as a control device for its storage vessel (as defined in 40 C.F.R. § 63.101), the owner/operator must comply with the provisions of 40 C.F.R. § 63.119(e). This requires an owner/operator to use the closed vent system to reduce organic HAP emissions as specified in 40 C.F.R. § 63.119(e)(1) and (2).
31. 40 C.F.R. § 63.120(d)(5) sets forth the methods by which the owner/operator will demonstrate compliance with the regulations for the closed vent system installed on its storage vessels, including monitoring the parameters established in the Notification of Compliance Status required by 40 C.F.R. § 63.152.
32. 40 C.F.R. § 63.120(d)(6) requires initial and annual inspections of the closed vent system.
33. 40 C.F.R. § 63.123(f) requires owners/operators who elect to install a closed vent system to keep the records specified in 40 C.F.R. § 63.123(f)(1) and (2).

Group 1 Transfer Rack Regulations

34. 40 C.F.R. § 63.101 defines “transfer rack” as the collection of loading arms and loading hoses, at a single loading rack, that are assigned to a chemical manufacturing process unit subject to this subpart according to the procedures specified in 63.100 of subpart F and are used to fill tank trucks and/or railcars with organic liquids that contain one or more of the organic hazardous air pollutants listed in table 2 of subpart F. “Group 1 transfer rack” means a transfer rack that annually loads greater than or equal to 0.65 million liter of liquid products that

contain organic hazardous air pollutants with a rack weighted average vapor pressure greater than or equal to 10.3 kilopascals. 40 C.F.R. § 63.111.

Installation Control Device and Recordkeeping

35. 40 C.F.R. § 63.126(a) requires each owner/operator of a Group 1 transfer rack to install a vapor collection system and control device on each transfer rack. 40 C.F.R. § 63.126(a)(1)-(3) describes the requirements for the vapor collection system and control device. 40 C.F.R. § 63.126(b)(1) states the requirements that shall be met for HAP emission control from the vapor collection system and the control device. 40 C.F.R. § 63.126(f) requires the owner or operator of a transfer rack subject to the provisions of this subpart to load organic HAPs to only tank trucks or railcars equipped with vapor collection equipment that is compatible with the transfer rack's vapor collection system. 40 C.F.R. § 63.126(g) requires the owner or operator of a transfer rack subject to this subpart to load organic HAPs to only tank trucks or railcars whose collection systems are connected to the transfer rack's vapor collection systems.

36. 40 C.F.R. § 63.127(a) requires owners/operators of a Group 1 transfer rack equipped with a combustion device used to comply with the organic HAP limits to install, calibrate, maintain, and operate the monitoring equipment for the combustion device to the manufacturers' specifications.

37. 40 C.F.R. § 63.128 requires a performance test for all control devices to demonstrate the reduction of organic HAP emissions. 40 C.F.R. § 63.129 sets forth the recordkeeping and reporting requirements for the performance tests required by 40 C.F.R. § 63.128 and the notification of compliance status for Group 1 transfer racks. 40 C.F.R. § 63.130 sets forth additional periodic recordkeeping and reporting requirements for Group 1 transfer racks.

Wastewater Stream Regulations

38. A "wastewater tank" means a stationary waste management unit that is designed to contain an accumulation of wastewater or residuals and is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support. Wastewater tanks used for flow equalization are included in this definition. 40 C.F.R. § 63.111. "Group 1 wastewater stream" means a wastewater stream consisting of process wastewater as defined in § 63.101 of subpart F at an existing or new source that meets the criteria for Group 1 status in § 63.132(c) of subpart G for Table 9 compounds. 40 C.F.R. § 63.111.

39. "Process wastewater" means wastewater which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. Examples are product tank drawdown or feed tank drawdown; water formed during a chemical reaction or used as a reactant; water used to wash impurities from organic products or reactants; water used to cool or quench organic vapor streams through direct contact; and condensed steam from jet ejector systems pulling vacuum on vessels containing organics. 40 C.F.R. § 63.101.

40. 40 C.F.R. § 63.132(g)(1)(ii) requires an owner/operator that elects to transfer a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream to an on-site treatment operation not owned by the owner/operator or to an off-site treatment operation to include a notice of shipment or transport of each Group 1 wastewater stream or residual removed from a Group 1 wastewater stream.

41. 40 C.F.R. § 63.133(a) states that for each wastewater tank that receives, manages, or treats a Group 1 wastewater stream or a residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the requirements of either paragraph (a)(1) or (a)(2) of this section as specified in table 10 of this subpart.

42. 40 C.F.R. § 63.133(a)(2) requires the owner/operator to operate and maintain an emissions control device on the process wastewater tanks. A fixed roof and a closed-vent system must route the organic hazardous air pollutants vapors vented from the wastewater tank to a control device. 40 C.F.R. § 63.133(a)(2)(i).

40 C.F.R. Subpart H-Leak Detection and Repair Provisions (LDAR)

43. 40 C.F.R. Subpart H sets forth the National Emissions Standards for Organic Hazardous Air Pollutants for Equipment Leaks.

44. 40 C.F.R. Subpart H applies to pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or closed vent systems required by this subpart that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 C.F.R. Part 63 that references this subpart. 40 C.F.R. § 63.160(a).

45. 40 C.F.R. § 63.163 sets forth the standards for pumps in light liquid service. 40 C.F.R. § 63.164 sets forth the standards for compressors. 40 C.F.R. § 63.168 lists the standards for valves in gas/vapor service and light liquid service. 40 C.F.R. § 63.169 sets for the standards for pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service. 40 C.F.R. § 63.171 sets forth the standards for delay of repair of equipment with leaks. 40 C.F.R. § 63.174 lists the standards for connectors in gas/vapor service and in light liquid service. 40 C.F.R. § 63.180 lists the standards for tests methods and procedures for leak detection and repair. 40 C.F.R. § 63.181 sets forth the recordkeeping requirements of Subpart H.

46. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition listed therein. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum

penalties to \$55,808 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 6, 2023.

47. Section 113(d)(2)(B) of the Act, 42 U.S.C. § 7413(d)(2)(B), states that the Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

General Factual Allegations

48. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

49. Respondent is the owner and operator of a facility that is a “stationary source” pursuant to 40 C.F.R. § 68.3.

50. EPA conducted a multi-media inspection of the Facility on July 26-28, 2021, pursuant to its information gathering authorities under the CAA and the CWA. The Facility was not operating during EPA’s inspection.

51. EPA selected the Facility for inspection because a Leak Detection and Repair (LDAR) test, required by 40 C.F.R. Part 63, Subpart H, and conducted by a contractor employed by Respondent and submitted to the State of Iowa, identified some concerning releases. An initial LDAR inspection and inventory of components regulated under the NESHAP requirements occurred during the week of June 21, 2021. It showed 34 leaking components. Initial repair was attempted immediately on all leaks. Following the initial repair attempt, 11 leaking components remained. The remaining leaks have since been addressed, with 10 components repaired and one component removed from service. These repairs included replacing gaskets, tightening bolts, closing valves, tightening valve packing, connector tightening, replacing a plug seal, and reseating a pressure relief valve.

52. On or about March 8, 2022, EPA and Respondent entered into an Administrative Compliance Order on Consent to address the issues identified during the July inspection. Respondent is in compliance with the terms of the Order.

53. Respondent’s chemical manufacturing company operated the Manly, Iowa Facility from late 2016 until December 2021 and may restart operations. The Facility can produce 20,000 metric tons per year of sodium methylate solution (also referred to as SMO or sodium methoxide). Sodium Methylate is used as a catalyst in biodiesel production. Methanol and sodium hydroxide are the raw materials used in the production of sodium methylate.

54. Respondent produces, processes, handles and/or stores bulk quantities of methanol and sodium methylate solution (SMO). Respondent’s maximum storage quantity inventory of methanol is 250 kiloliters/66,034 gallons/or about 435,004 pounds.

55. Methanol and sodium methylate solution have the following characteristics.

- a) Methanol is a colorless volatile liquid with a faintly sweet pungent odor like that of ethyl alcohol. Methanol completely mixes with water. The vapors are slightly heavier than air and may travel some distance to a source of ignition and flash back. Any accumulation of vapors in confined spaces, such as buildings or sewers, may explode if ignited. It is used to make chemicals, to remove water from automotive and aviation fuels, as a solvent for paints and plastics, and as an ingredient in a wide variety of products. Exposure to excessive vapor causes eye irritation, headache, fatigue, and drowsiness. High concentrations can produce central nervous system depression and optic nerve damage. 50,000 parts per million will probably cause death in one to two hours. Methanol can be absorbed through skin. Swallowing may cause death or eye damage. The level at which it is immediately dangerous to life or health (“IDLH”) is 6,000 ppm. Methanol is a highly flammable substance that can be ignited under almost all ambient temperature conditions, with a flash point of 52°F. Methanol’s lower explosive limit (“LEL”) is 6% and upper explosive limit (“UEL”) is 36.5% (CAMEO Chemicals).
- b) Sodium methylate solution (SMO) is colorless cloudy white liquid consisting of sodium methylate, a solid, dissolved in methyl alcohol. It is corrosive to metals and issue. Used to process edible fats and oils and as a catalyst in chemical manufacture. It is highly flammable, ignites in moist air, and reacts with water to produce a mixed solution of sodium hydroxide and methyl alcohol. It can be ignited by heat, sparks or flames. Vapors may form explosive mixtures with air. Vapors may travel to source of ignition and flash back. Most vapors are heavier than air. They will spread along ground and collect in low or confined areas (sewers, basements, tanks) causing vapor explosion hazard indoors, outdoors, or in sewers. Runoff to sewer may create fire or explosion hazard. Containers may explode when heated. SMO is a strong base. It reacts with light metals forming hydrogen gas with fire and explosion hazards (CAMEO Chemicals). Respondent’s SMO LEL is 6%, UEL is 50%, and its flash point is 92.3-96°F (New Heaven Chemicals Iowa, LLC’s safety data sheet).

Accordingly, each of these substances is an “extremely hazardous substance” within the meaning of the General Duty Clause of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

56. Respondent’s maximum storage quantity inventory of methanol is 250 kiloliters, equivalent to 66,043 gallons, or about 435,004 pounds. Respondent’s maximum storage quantity inventory of SMO is 350 kiloliters, equivalent to 92,460 gallons, or about 748,468 pounds.

57. Respondent is subject to the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), because it is the owner and operator of a stationary source that produced, processed, handled or stored substances listed pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3) and/or extremely hazardous substances pursuant to Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B).

58. During the July 2021 inspection, EPA observed that Respondent had not completed a hazard assessment, hazard review, or process hazard analysis.

59. The National Fire Protection Association's Flammable and Combustible Liquids Code, NFPA 30, section 6.4.1 states that "operations involving ignitable (flammable or combustible) liquids shall be reviewed to ensure that fire and explosion hazards are addressed by fire prevention, fire control, and emergency action plans, except as provided in 6.4.1.1."

60. During the inspection, EPA observed that several of the facility's components were made of aluminum. One condenser was installed with malleable iron tubes instead of stainless steel. Because of this, iron was being leached from the tubes and into the non-process water during operation which led to nearly continuous non-process effluent violations. This led to elevated iron levels in Respondent's wastewater. Upon discovering this, the facility raised the pH of the non-process water to reduce leaching of iron from the condenser.

61. Respondent's SMO 30% SDS lists aluminum, lead, brass, zinc, and tin as incompatible materials. SMO is corrosive to these metals. Respondent insulated its SMO piping with aluminum insulation. EPA observed corroded insulation that could have been exposed to SMO.

62. During the inspection, EPA observed two blowers, condensate columns, and a pump that were currently removed from service. The pump had been removed from service due to the June 2021 LDAR study.

63. NFPA 30, section 21.8 "Inspection and Maintenance of Storage Tanks and Storage Tank Appurtenances," requires that each tank constructed of steel be inspected and maintained per API [American Petroleum Institute] Standard 653 Tank Inspections, Repairs, Alterations, and Reconstructions, or STI [Steel Tank Institute] SP001, Standard for the Inspection of Aboveground Storage Tanks. Both standards require formal reoccurring in service inspections, external inspections, and internal inspections.

64. In 2019, the Iowa Department of Natural Resources (IDNR) issued a Notice of Violation (NOV) to the Responded that required them to comply with several provisions of Section 112 of the Clean Air Act and the NESHAP regulations.

Allegations of Violation

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

66. The facts stated in Paragraphs 48 through 64, above are herein incorporated.

Count 1 **General Duty Clause Violation**

67. Based on the information available to EPA, EPA has determined that Respondent failed to comply with its general duty, pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), by failing to identify hazards which may result from releases using appropriate hazard assessment techniques, and failing to design and maintain a safe facility, taking such steps as are necessary to prevent releases; and that such failures are violations of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 2
Failure to keep records (Facility -Wide)

68. Respondent failed to keep copies of all applicable reports and records required by Subparts F, G and H as required by 40 C.F.R. § 63.103(c). It also failed to demonstrate compliance with Emission Standards in 40 C.F.R. § 63.112. Respondent failed to submit periodic reports as required by 40 C.F.R. § 63.152(c) and 40 C.F.R. § 63.152(d).

69. Failure to maintain the reports and records, comply with the Emissions Standards, and submit periodic reports are violations of Section 112 of the CAA, 42 U.S.C. § 7412.

Count 3
Failure to implement an SSM Plan

70. Respondent is required to have a startup, shutdown, and malfunction plan for the facility. The NOV issued by IDNR required the facility to implement an SSM plan. Respondent did not develop and implement a written startup, shutdown, and malfunction plan as required by 40 C.F.R. § 63.6(e)(3) and IDNR's ACO.

71. Failure to develop and implement an SSM plan is a violation of Section 112 of the CAA, 42 U.S.C. § 7412.

Count 4
Failure to Keep Records for Group 1 Storage Vessels at the Facility

72. The NOV issued by IDNR required Respondent to submit the reports required by 40 C.F.R. §§ 63.152; 63.122(h)(1) and (h)(2); and 63.123 by September 2021. Respondent has never submitted these reports.

73. Failure to submit the required reports is a violation of Section 112 of the CAA, 42 U.S.C. § 7412.

Count 5
Failure to Install a Control Device and Conduct Leak Repair Inspections for the Group 1 Storage Vessels at the Facility

74. Respondent is required by the NESHAP to install a control device, in this instance a vapor control unit (VCU) to reduce emissions of SMO and methanol at the facility. IDNR sent an NOV to Respondent notifying it of its failure to install this control equipment. Respondent

installed temporary control equipment in the summer of 2021. The temporary equipment was removed in December 2021. Respondent does not currently have a VCU or any other control equipment at the Facility.

75. Respondent did not install the required control equipment before beginning operations. Respondent did not install the vapor control unit and therefore failed to meet emission reductions as required by 40 C.F.R. § 63.119(e). Because the control device was not installed, Respondent also failed to meet the leak inspection provisions of 40 C.F.R. § 63.148. Respondent failed to monitor the parameters specified in the Notification of Compliance Status required by 40 C.F.R. § 63.152(b) and to operate and maintain the control device such that the monitored parameters remain within the ranges specified as required by 40 C.F.R. § 63.120(d)(5). Respondent also failed to conduct initial and annual inspections on each closed vent system as required by 40 C.F.R. § 63.148(b). Finally, Respondent failed to keep records of the measured values of the parameters monitored and records of the planned routine maintenance performed on the control device as required by 40 C.F.R. § 63.123(f).

76. The failure to comply with the requirements as stated in Paragraphs 74 and 75 constitute violations of Section 112 of the CAA, 42 U.S.C. § 7412.

Count 6
Failure to Keep Record for the Group 1 Transfer Racks at the Facility.

77. IDNR issued an NOV to Respondent notifying them of its failure to comply with the NESHAP. Respondent failed to comply with control equipment requirements in 40 C.F.R. § 63.119 in the time frame required by 40 C.F.R. § 63.100. Respondent failed to use a control device to reduce emissions as required by 40 C.F.R. § 63.126(b).

78. Respondent failed to load organic HAPs only to tank trucks equipped with a vapor collection equipment that is compatible with the transfer rack's vapor collection system as required by 40 C.F.R. § 63.126(f). Respondent failed to load organic HAPs to only tank trucks whose collection systems are connected to the transfer rack's vapor collection system as required by 40 C.F.R. § 63.126(g). Respondent failed to install, calibrate, maintain, and operate monitoring equipment specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of 40 C.F.R. § 63.127 as appropriate. Respondent failed to keep records as required by 40 C.F.R. §§ 63.129 and 63.130.

79. The failure to comply with the requirements as stated in Paragraphs 77 and 78 are violations of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

Count 7
Failure to Operate and Maintain Emission Controls at the Facility Wastewater Stream

80. Respondent failed to operate and maintain one of the emission control techniques listed in paragraphs (a)(2)(i) through (a)(2)(iv) of 40 C.F.R. § 63.133. Respondent failed to conduct monitoring in accordance with 40 C.F.R. § 63.139(d) and the requirements specified in paragraph (e)(1), (e)(2), or (e)(3) of 40 C.F.R. § 63.143. Respondent failed to include a notice

with the shipment or transport of each Group 1 wastewater stream as required by 40 C.F.R. § 63.132(g).

81. Respondent's facility has drains on the bottom of the distillation columns that drop methanol infused water onto pavement to a drain approximately 3 feet away. These drains are part of the Facility's wastewater system and are required to comply with 40 C.F.R. § 63.136, which includes two options for compliance. These drains are either subject to 40 C.F.R. §§ 63.136 (b), (c), and (d) or with paragraphs (e), (f), and (g) of this section. Respondent has never decided the status, as required by the regulations.¹

82. The failure to comply with the requirements as stated in Paragraphs 80 and 81 are violations of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

Count 8
Failure to Comply with LDAR Requirements

83. Respondent failed to implement leak detection and repair standards for equipment as required by 40 C.F.R. §§ 63.163; 63.164; 63.168; 63.169; 63.171; and 63.174.

84. Respondent failed to implement general testing, monitoring and recordkeeping as required by 40 C.F.R. §§ 63.180 and 63.181.

85. Respondent failed to submit reports as required by 40 C.F.R. § 63.182.

86. The failure to comply with the requirements as stated in Paragraphs 83, 84, and 85 are violations of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

CONSENT AGREEMENT

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

- a) admits the jurisdictional allegations set forth herein;
- b) neither admits nor denies the specific factual allegations stated herein;

¹ If the drains are subject to 40 C.F.R. §§ 63.136(b), (c), and (d), then New Heaven is required to design and operate the individual drain system to segregate the vapors within the system from other drain systems and the atmosphere. Currently, the vapors not segregated from atmosphere. 40 C.F.R. § 63.136(c) also requires each individual drain system to be inspected semi-annually. New Heaven has never inspected their drain system.

If New Heaven is subject to 40 C.F.R. §§ 63.136 (e), (f) and (g), then the violations are (e) (3) Each sewer line shall not be open to the atmosphere and shall be covered or enclosed in a manner so as to have no visible gaps or cracks in joints, seals, or other emission interfaces. Currently, the sewer line is open to atmosphere at the point from the drain to the in the ground drain.

- c) consents to the assessment of a civil penalty, as stated herein;
- d) consents to the issuance of any specified compliance or corrective action order;
- e) consents to any conditions specified herein;
- f) consents to any stated Permit Action;
- g) waives any right to contest the allegations set forth herein; and
- h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

88. Respondent consents to the issuance of this Consent Agreement and Final Order and the conditions specified herein.

89. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

90. The parties consent to service of this Consent Agreement and Final Order electronically at the following e-mail addresses: *hertzwu.sara@epa.gov* (for Complainant) and *cfbecker@belinmccormick.com* (for Respondent). Respondent understands that the Consent Agreement and Final Order will become publicly available upon filing.

Penalty Payment

91. EPA has considered the appropriateness of the penalty pursuant to Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), and has determined that the appropriate penalty for the violations is \$1,792,540. However, pursuant to the statutory requirement that EPA consider the economic impact of the penalty on Respondent's business, Respondent has demonstrated that it is unable to pay any penalty in this matter. Because of Respondent's inability to pay the penalty, therefore, Complainant conditionally agrees to resolve the claims alleged herein.

Conditions

92. As a condition of settlement and in compromise of the civil penalty that EPA could otherwise impose herein, Respondent agrees to the following:

(a) The Facility is currently not operating, but Respondent intends to re-start operations in the future. "**Start-up**" means the setting into operation of a chemical manufacturing process unit or a reactor, air oxidation reactor, distillation unit, waste management unit, or equipment required or used to comply with 40 C.F.R Part 63, Subparts F, G, or a storage vessel after emptying and degassing. "Start-up" includes initial start-up, operation solely for testing

equipment, the recharging of equipment in batch operation, and transitional conditions due to changes in product for flexible operation units. 40 C.F.R. § 63.101.

(b) Respondent shall notify EPA and IDNR no later than sixty (60) days prior to re-starting operations at the Facility.

(c) Respondent shall install all control equipment required by 40 C.F.R. Part 63, Subpart G prior to “start-up,” as defined in Paragraph 92(a).

(d) Respondent shall obtain all appropriate Clean Air Act permits prior to “start-up” as defined in Paragraph 92(a).

Effect of Settlement and Reservation of Rights

93. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent’s liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

94. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent’s representations to the EPA, as memorialized in the paragraph directly below.

95. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the CAA and its implementing regulations.

96. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

97. This Consent Agreement and Final Order constitutes an “enforcement response” as that term is used in EPA’s *Clean Air Act Combined Enforcement Response Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

98. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

99. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

100. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

101. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

102. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT:
NEW HEAVEN CHEMICALS IOWA, LLC

Date: January 27, 2023.



Signature

RAMESH HORDAS

Name

Chairman

Title

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

Date: _____

Tracey Casburn
Air Branch Chief
Enforcement and Compliance Assurance Division

Date: _____

Sara Hertz Wu
Senior Counsel
U.S. Environmental Protection Agency, Region 7

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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date: _____ By: _____
Karina Borromeo
Regional Judicial Officer
United States Environmental Protection Agency
Region 7

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order, in the matter of New Heaven Chemicals Iowa, LLC, EPA Docket No. CAA-07-2023-0023, was sent this day in the following manner to the following addressees:

Copy via E-mail to Complainant:

Sara Hertz Wu
Senior Attorney
Office of Regional Counsel
hertzwu.sara@epa.gov

Copy via E-mail to counsel for Respondent:

Charles F. Becker, Attorney
Belin McCormick P.C.
cfbecker@belinmccormick.com

Dated this _____ day of _____, _____.

Signed