



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 03 2012

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Mark Gaddy
Plant Manager
Kraton Polymers U.S. LLC
2419 State Route 618
Belpre, Ohio 45714

Re: Kraton Polymers U.S. LLC, Belpre, Ohio, Consent Agreement and Final Order
Docket Nos MM-05-2013-0001 CERCLA-05-2013-0001 EPCRA-05-2013-0001

Dear Mr. Gaddy:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on October 3, 2012.

Please pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$36,267 in the manner prescribed in paragraph 76, and reference your check with the billing document number 2751330B001 and the docket number CERCLA-05-2013-0001.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$72,533 in the manner prescribed in paragraph 78, and reference your check with the billing document number 2751344E001 and the docket number EPCRA-05-2013-0001.

Your payments are due on November 2, 2012.

Please feel free to contact James Entzminger, at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert H. Smith, Associate Regional Counsel, at (312) 886-0765. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

MM-05-2013-0001

EPCRA-05-2013-0001

In the Matter of:

Kraton Polymers U.S. LLC
Belpre, Ohio,

Respondent.

RECEIVED
OCT - 3 2012
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Docket Nos CERCLA-05-2013-0001

Proceeding to Assess a Civil Penalty Under
Section 109(b) of the Comprehensive
Environmental Response, Compensation and
Liability Act, and Section 325(b)(2) of the
Emergency Planning and Community Right-
to-Know Act of 1986

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), and Sections 22.13(b) and 22.18(b)(2) and (3) 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 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. The Respondent is Kraton Polymers U.S. LLC, a Delaware corporation doing business in the State of Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel, and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 304(a)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of a hazardous substance in quantities equal to or

greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

13. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous chemicals.

14. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$32,500 per day of violation that occurred after March 15, 2004 through January 12, 2009, and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

15. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

16. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

17. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 2419 State Route 618, Belpre, Ohio (facility).

18. At all times relevant to this CAFO, Respondent was in charge of the facility.

19. Respondent's facility consists of buildings, structures, equipment, pipe or pipeline, lagoon, impoundment, storage container, or any site or area where a hazardous substance has been deposited, stored, placed, or otherwise come to be located.

20. Respondent's facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

22. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

23. 1, 3-Butadiene (CAS #930-22-3) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24. 1, 3-Butadiene (CAS #930-22-3) has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

25. 1, 3-Butadiene (CAS #930-22-3) is listed as a toxic and hazardous substance under the Occupational Safety and Health Act (OSHA) at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

26. 1, 3-Butadiene (CAS #930-22-3) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

27. At all times relevant to this CAFO, Respondent produced, used, or stored 1, 3-butadiene at the facility.

28. On June 20, 2009, at or about 8:50 a.m., a release occurred from Respondent's facility of approximately 170 pounds of 1, 3-butadiene (the butadiene release).

29. In a 24 hour time period, the butadiene release exceeded 10 pounds.

30. During the butadiene release, approximately 170 pounds spilled, leaked, pumped, poured, emitted, discharged, escaped, dumped, or disposed into the ambient air and/or the air.

31. The butadiene release is a "release" as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

32. The butadiene release is a "release" as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

33. Respondent had knowledge of the butadiene release on June 20, 2009, at approximately 8:50 a.m.

34. The butadiene release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

35. Isoprene (CAS #78-79-5) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

36. Isoprene (CAS #78-79-5) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

37. The Material Safety Data Sheet for isoprene (CAS #78-79-5) identifies health hazards as an irritation to the respiratory system, the skin, the eye, and damage to the lungs. Therefore, isoprene is a hazardous chemical under OSHA regulations at 29 C.F.R. Part 1910.1200.

38. Isoprene (CAS #78-79-5) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(e).

39. At all times relevant to this CAFO, Respondent produced, used, or stored isoprene at the facility.

40. On June 20, 2009, at or about 8:50 a.m., a release occurred from Respondent’s facility of approximately 600 pounds of isoprene (the isoprene release).

41. In a 24 hour time period, the isoprene release exceeded 100 pounds.

42. During the isoprene release, approximately 600 pounds spilled, leaked, pumped, poured, emitted, discharged, escaped, dumped, or disposed into the ambient air and/or the air.

43. The isoprene release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

44. The isoprene release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

45. Respondent had knowledge of the isoprene release on June 20, 2009, at approximately 8:50 a.m.

46. The isoprene release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

47. The butadiene release and isoprene release were likely to affect Ohio.

48. At all times relevant to this CAFO, the Ohio Environmental Protection Agency was the SERC for Ohio under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

49. The butadiene release and isoprene release were likely to affect Washington County, Ohio.

50. At all times relevant to this CAFO, the Washington County LEPC was the LEPC for Washington County, Ohio under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

Count 1

51. Complainant incorporates paragraphs 1 through 50 of this CAFO as if set forth in this paragraph.

52. Respondent notified the NRC of the butadiene release on June 23, 2009, at 4:15 p.m.

53. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the butadiene release.

54. U.S. EPA alleges that Respondent's failure to immediately notify the NRC of the butadiene release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Count 2

55. Complainant incorporates paragraphs 1 through 50 of this CAFO as if set forth in this paragraph.

56. Respondent notified the Ohio SERC of the butadiene release on June 23, 2009, at 4:05 p.m.

57. Respondent did not immediately notify the SERC after Respondent had knowledge of the butadiene release.

58. U.S. EPA alleges that Respondent's failure to immediately notify the SERC of the butadiene release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Count 3

59. Complainant incorporates paragraphs 1 through 50 of this CAFO as if set forth in this paragraph.

60. Respondent notified the LEPC of the butadiene release on June 23, 2009, at 3:36 p.m.

61. Respondent did not immediately notify the LEPC after Respondent had knowledge of the butadiene release.

62. U.S. EPA alleges that Respondent's failure to immediately notify the LEPC of the butadiene release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Count 4

63. Complainant incorporates paragraphs 1 through 50 of this CAFO as if set forth in this paragraph.

64. Respondent notified the NRC of the isoprene release on June 23, 2009, at 4:15 p.m.

65. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the isoprene release.

66. U.S. EPA alleges that Respondent's failure to immediately notify the NRC of the isoprene release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Count 5

67. Complainant incorporates paragraphs 1 through 50 of this CAFO as if set forth in this paragraph.

68. Respondent notified the Ohio SERC of the isoprene release on June 23, 2009, at 4:05 p.m.

69. Respondent did not immediately notify the SERC after Respondent had knowledge of the isoprene release.

70. U.S. EPA alleges that Respondent's failure to immediately notify the SERC of the isoprene release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Count 6

71. Complainant incorporates paragraphs 1 through 50 of this CAFO as if set forth in this paragraph.

72. Respondent notified the LEPC of the isoprene release on June 23, 2009, at 3:36 p.m.

73. Respondent did not immediately notify the LEPC after Respondent had knowledge of the isoprene release.

74. U.S. EPA alleges that Respondent's failure to immediately notify the LEPC of the isoprene release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Civil Penalty

75. Complainant has determined that an appropriate civil penalty to settle this action is \$36,267 for the CERCLA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

76. Within 30 days after the effective date of this CAFO, Respondent must pay a \$36,267 civil penalty for the CERCLA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

for checks sent by express mail by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Bank
Government Lockbox 979076 U.S. EPA Superfund Payments
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: Kraton Polymers U.S. LLC, the docket number of this CAFO, and the billing document number 2751330 B001

77. Complainant has determined that an appropriate civil penalty to settle this action is \$72,533 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

78. Within 30 days after the effective date of this CAFO, Respondent must pay a \$72,533 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

for checks sent by express mail by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: Kraton Polymers U.S. LLC, the docket number of this CAFO, and the billing document number 2751344E001.

79. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket numbers, and the billing document number must accompany each payment. Respondent must send a copy of the checks and transmittal letters to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

James Entzminger (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert H. Smith (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

80. This civil penalty is not deductible for federal tax purposes.

81. If Respondent does not timely pay the civil penalty, then U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment

penalties, and the United States' enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

82. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

83. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

84. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

85. Respondent certifies that, to the best of its knowledge, it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004.

86. This CAFO does not affect Respondent's responsibility to comply with CERCLA, EPCRA, and other applicable federal, state, and local laws and regulations.

87. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

88. The terms of this CAFO bind Respondent and its successors and assigns.

89. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

90. Each party agrees to bear its own costs and attorney's fees in this action.

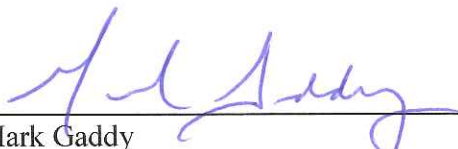
91. This CAFO constitutes the entire agreement between the parties.

In the Matter of: Kraton Polymers U.S. LLC, Belpre, Ohio

Docket No. _____

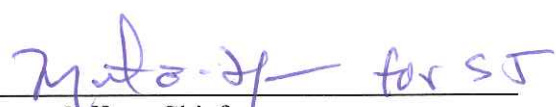
Kraton Polymers U.S. LLC, Respondent

9-17-2012
Date



Mark Gaddy
Plant Manager - Belpre
Kraton Polymers U.S. LLC

U.S. Environmental Protection Agency, Complainant

10-1-12
Date

 for SJ
Sharon Jaffess, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5


10-1-12
Date

 10-1-12
Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

10-2-12
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

RECEIVED
OCT - 3 2012
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Certificate of Service


I, James Entzminger, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent, with a copy to Respondent's counsel, by placing it in the custody of the United States Postal Service addressed as follows:

Mark Gaddy
Plant Manager
Kraton Polymers U.S. LLC
2419 State Route 618
Belpre, Ohio 45714

Ben L. Pfefferle III
Baker Hostetler LLP
Capitol Square, Suite 2100
65 East State Street
Columbus, Ohio 43215-4260



on the 3 day of October, 2012


James Entzminger
U.S. Environmental Protection Agency
Region 5