

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Reg 2
2016 APR 14 PM 3:09
REGIONAL HEARINGS
CLERK

In the matter of:

Oxy Vinyls, LP
Pedricktown, New Jersey

Respondent

In a proceeding under Section 113(d)
of the Clean Air Act, 42 U.S.C. § 7413(d)

**CONSENT AGREEMENT
AND
FINAL ORDER**

CAA-02-2016-1201

PRELIMINARY STATEMENT

This Consent Agreement and Final Order (CAFO) simultaneously commences and concludes an administrative penalty proceeding brought by the Complainant, the Director of the Division of Enforcement and Compliance Assistance for the U.S. Environmental Protection Agency (EPA) Region 2, against Oxy Vinyls, LP (Oxy or Respondent), pursuant to Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and Rules 22.13(b) and 22.18(b) of EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (the Consolidated Rules), 40 C.F.R. Part 22.

This Consent Agreement is signed by the Complainant and Respondent, and the Final Order is issued by the Region 2 Regional Administrator. As set forth in the "Jurisdictional Allegations" section of the Consent Agreement, the Complainant is duly authorized to sign consent agreements and the Regional Administrator is duly authorized to issue final orders.

CONSENT AGREEMENT

General Provisions

1. EPA has determined that Oxy violated the CAA and its implementing regulations at its facility (the Facility) located at Route 130 & Porcupine Road in Pedricktown, New Jersey. Specifically, EPA has determined that Oxy violated the “National Emission Standard for Vinyl Chloride,” 40 C.F.R. Part 61, Subpart F (Vinyl Chloride NESHAP), and the “National Emission Standard for Equipment Leaks (Fugitive Emission Sources),” 40 C.F.R., Part 61, Subpart V (Fugitive Emission NESHAP), each of which were promulgated by EPA pursuant to Sections 112 and 114 of the CAA, as well as provisions of the Facility’s Title V operating permit issued pursuant to Title V of the Act and N.J.A.C. 7:27-22. The specific violations found by EPA are set forth below in the section of this Consent Agreement entitled “Conclusions of Law.”
2. Complainant and Respondent enter into this Consent Agreement and propose the attached Final Order so as to resolve the violations alleged in the “Conclusions of Law” section of this Consent Agreement. Pursuant to the Consolidated Rules 22.13(b) and 22.18(b), the issuance of the Consent Agreement and Final Order serves to simultaneously commence and conclude the agency’s administrative penalty proceeding for those violations.
3. For the purposes of this proceeding, and to avoid the expense of litigation, Respondent:
 - a. admits the jurisdictional allegations set forth below in the section of this Consent Agreement entitled “Jurisdictional Allegations;”
 - b. neither admits nor denies the findings of fact set forth in the section of this Consent Agreement entitled “Findings of Fact,”
 - c. consents to the payment of the civil penalty specified in the section of this Consent Agreement entitled “Settlement,” on the terms specified in that section;
 - d. consents to the issuance of the attached Final Order; and

- e. waives any right to contest the allegations set forth in the “Conclusions of Law” section of this Consent Agreement and any right to appeal the attached Final Order.

Jurisdictional Allegations

4. Section 113(d) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Sections 112 and 114 of the Act.
5. Section 302(e) of the CAA provides that whenever the term “person” is used in the Act, the term includes an 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.
6. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to the Complainant, the Director of the Division of Enforcement and Compliance Assistance, through the Region 2 Regional Administrator, the authority to (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.
7. Pursuant to EPA Delegation of Authority 7-6-C, the Administrator has delegated to the Region 2 Regional Administrator the authority to execute CAA Section 113(d) Final Orders.

8. Pursuant to Section 113(d), the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty proceeding. Specifically, on October 20, 2015, the United States Department of Justice (DOJ) granted EPA's request for a waiver of the CAA Section 113(d) 12-month time limitation on EPA's authority to initiate an administrative penalty action in this matter.
9. Respondent is a "person" within the meaning of Section 302(e) of the Act.
10. Respondent is an "owner or operator" of the Facility, as that term is used in CAA Section 112(a)(9) and 40 C.F.R. § 61.02.
11. The Facility is a "stationary source," as that term is used Section 112(a)(3) of the Act and 40 C.F.R. § 61.02.
12. The Facility is subject to a Title V operating permit that was issued to Oxy pursuant to Title V of the Act and N.J.A.C. 7:27-22, the EPA-approved Title V operating permit program for the State of New Jersey.

Legal Background

CAA Sections 112 and 114

13. Section 112 of the Act requires the EPA Administrator to: (i) publish a list of hazardous air pollutants (HAPs), (ii) publish a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each such category and subcategory.
14. Emissions standards promulgated pursuant to Section 112 are commonly known as National Emission Standards for Hazardous Air Pollutants (NESHAPs). NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61.

15. Section 112(a) of the Act contains definitions relevant to Section 112. Specifically:
 - a. Section 112(a)(3) of the Act defines “stationary source” as any building, structure, facility or installation which emits or may emit any air pollutant.
 - b. Section 112(a)(9) defines “owner or operator” as any person who owns, leases, operates, controls or supervises a stationary source.
16. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.
17. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Section 112 of the Act.
18. Pursuant to Section 112 of the Act, EPA promulgated the Vinyl Chloride NESHAP, 40 C.F.R. § 61.60 *et seq.*
19. 40 C.F.R. § 61.60(a)(3) provides that the Vinyl Chloride NESHAP applies to plants which produce one or more polymers containing any fraction of polymerized vinyl chloride.
20. Pursuant to the Definitions of 40 C.F.R. § 61.61 at (b), “Vinyl chloride plant” includes any plant which produces vinyl chloride by any process, and at (w), “Leak” means any of several events that indicate interruption of confinement of vinyl chloride within process equipment. Leaks include events regulated under Subpart V of 40 C.F.R. Part 61 such as:
 - (1) an instrument reading of 10,000 ppm or more measured according to Method 21, among other things.

21. 40 C.F.R. § 61.65(b)(8)(ii) provides that for each process unit subject to the Vinyl Chloride NESHAP, a formal leak detection and repair (LDAR) program shall be implemented consistent with the requirements of the Fugitive Emission NESHAP at 40 C.F.R. Part 61, Subpart V.
22. Pursuant to Section 112 of the Act, EPA promulgated the Fugitive Emission NESHAP, 40 C.F.R. § 61.240 *et seq.*
23. Pursuant to 40 C.F.R. § 61.240(a), the provisions of the Fugitive Emission NESHAP apply to each of the following sources that are intended to operate in volatile hazardous air pollutant (“VHAP”) service: pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, and control devices or systems required by the Fugitive Emission NESHAP.
24. 40 C.F.R. § 61.245(b)(1) provides that monitoring shall comply with Method 21 of Appendix A of 40 C.F.R. Part 60 (Method 21).
25. Method 21 Section 8.3.1 of 40 C.F.R. 60 Appendix A – *Type I - Leak Definition Based on Concentration* provides the following: “Place the probe inlet at the surface of the component interface where leakage could occur. Move the probe along the interface periphery while observing the instrument readout. If an increased meter reading is observed, slowly sample the interface where leakage is indicated until the maximum meter reading is obtained. Leave the probe inlet at this maximum reading location for approximately two times the instrument response time. If the maximum observed meter reading is greater than the leak definition in the applicable regulation, record and report the results as specified in the regulation reporting requirements.” In addition, 40 C.F.R. § 61.245(b)(5) provides that the instrument probe shall be traversed around all potential

- leak interfaces as close to the interface as possible as described in Method 21.
26. 40 C.F.R. § 61.245(b)(2) provides that the detection instrument shall meet the performance criteria of Method 21.
27. Method 21 Section 8.1.2 of 40 C.F.R. Part 60, Appendix A - *Calibration Precision* requires the following: “The calibration precision test must be completed prior to placing the analyzer into service and at subsequent 3-month intervals or at the next use, whichever is later.
- a. Make a total of three measurements by alternately using zero gas and the specified calibration gas. Record the meter readings. Calculate the average algebraic difference between the meter readings and the known value. Divide this average difference by the known calibration value and multiply by 100 to express the resulting calibration precision as a percentage.
 - b. The calibration precision shall be equal to or less than 10 percent of the calibration gas value.”
28. Method 21 Section 8.1.3 of 40 C.F.R. Part 60, Appendix A - *Response Time* requires the following: “The response time test is required before placing the instrument into service. If a modification to the sample pumping system or flow configuration is made that would change the response time, a new test is required before further use.
- a. Introduce zero gas into the instrument sample probe. When the meter reading has stabilized, switch quickly to the specified calibration gas. After switching, measure the time required to attain 90 percent of the final stable reading. Perform this test sequence three times and record the results. Calculate the average response time.
 - b. The instrument response time shall be equal to or less than 30 seconds. The instrument pump, dilution probe (if any), sample probe, and probe filter that will be used during testing shall all be in place during the response time determination.”
29. 40 C.F.R. § 61.245(b)(3) provides that the instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21. 40 C.F.R. § 61.245(b)(4) provides that calibration gases shall be:

- a. Zero air (less than 10 ppm of hydrocarbon in air); and
 - b. A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.
30. Method 21 Section 7.1 of 40 C.F.R. Part 60, Appendix A provides the following: “Two gas mixtures are required for instrument calibration and performance evaluation:
 - a. Zero Gas. Air, less than 10 parts per million by volume (“ppmv”) VOC.
 - b. Calibration Gas. For each organic species that is to be measured during individual source surveys, obtain or prepare a known standard in air at a concentration approximately equal to the applicable leak definition specified in the regulation.”
31. Pursuant to Section 112 of the Act, EPA promulgated the “National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production,” 40 C.F.R. Part 63, Subpart HHHHHHH, § 63.11860 *et seq.* (PVC MACT).
32. 40 C.F.R. § 63.11871 provides that after the applicable compliance date specified in 40 C.F.R. § 63.11875(a), (b) or (c), an affected source that is also subject to the provisions of 40 C.F.R. Part 61, Subpart F, is required to comply with the provisions of the PVC MACT and no longer has to comply with 40 C.F.R. Part 61, Subpart F.
33. 40 C.F.R. § 63.11915(a) requires that facilities subject to the new PVC MACT must comply with certain equipment leaks requirements cited in 40 C. F. R. Part 63, Subpart UU, which references Method 21 at 40 C.F.R. § 63.1023(b)(1).

Findings of Fact

34. Respondent is the owner and operator of the Facility.
35. Oxy’s Facility, located at Route 130 & Porcupine Road, Pedricktown, New Jersey, uses vinyl chloride monomer to produce suspension PVC resin that meets the applicability of the Vinyl Chloride NESHAP. The Facility operates under an approved Title V operating

permit issued by the New Jersey Department of Environmental Protection: BOP130001 with an expiration date of February 2, 2019.

36. On April 7, 2014, EPA Region 2 conducted an inspection at this Facility to determine compliance with all applicable fugitive leak detection requirements codified at 40 C.F.R. Part 61, Subpart V, and listed in the Facility's Title V operating permit at reference #60 on Page 36.
37. During the April 7, 2014 EPA inspection, EPA observed that Oxy uses a portable leak monitoring detector identified as iBrid MX6 Multigas Monitor.
38. During the April 7, 2014 EPA inspection, EPA observed that the Oxy technician did not use a zero air gas cylinder while performing the calibration of the iBrid MX6 Multigas Monitor.
39. During the April 7, 2014 EPA inspection, Oxy indicated that the Oxy technician did not previously perform calibration precision testing prior to using its iBrid MX6 Multigas Monitor.
40. During the April 7, 2014 EPA inspection, Oxy indicated that the Oxy technician did not previously perform calibration response time testing on the iBrid MX6 Multigas Monitor.
41. During the April 7, 2014 EPA inspection, EPA observed that the Oxy technician does not traverse the entire surface of a component where a leak can occur and instead holds the iBrid MX6 Multigas Monitor stationary at a component for approximately 20 seconds.
42. The new PVC MACT became effective on April 17, 2015, replacing 40 C.F.R. Part 61, Subpart F with 40 C.F.R. Part 63, Subpart HHHHHHH, and the Fugitive Emission NESHAP, 40 C.F.R. Part 61, Subpart V, is replaced with 40 C.F.R. Part 63, Subpart UU. The applicability and requirements of Method 21 remain the same.

Conclusions of Law

Based on the Findings of Fact set forth above, EPA reaches the following Conclusions of Law:

43. The Respondent is a “person,” within the meaning of Section 302(e) of the Act.
44. At the time of the violations alleged in this Consent Agreement, Respondent was subject to the Vinyl Chloride NESHAP, 40 C.F.R. Part 61, Subpart F.
45. At the time of the violations alleged in this Consent Agreement, Respondent was subject to the Fugitive Emission NESHAP, 40 C.F.R., Part 61, Subpart V.
46. Respondent violated 40 C.F.R. § 61.245(b)(1) and EPA Method 21 by failing to use the proper monitoring technique when performing LDAR monitoring with the portable leak monitoring detector iBrid MX6 Multigas Monitor.
47. Respondent violated 40 C.F.R. § 61.245(b)(2) and EPA Method 21 by failing to perform a quarterly calibration precision test prior to using the portable leak monitoring detector iBrid MX6 Multigas Monitor.
48. Respondent violated 40 C.F.R. § 61.245(b)(2) and EPA Method 21 by failing to perform a calibration response time test on the portable leak monitoring detector iBrid MX6 Multigas Monitor.
49. Respondent violated 40 C.F.R. § 61.245(b)(4) and EPA Method 21 by failing to perform a calibration with zero air prior to using the portable leak monitoring detector iBrid MX6 Multigas Monitor.

Settlement

50. Pursuant to Section 113(d) of the Act, Respondent shall pay a civil penalty of **\$61,000**. Respondent shall pay the entire \$61,000, either by corporate, cashiers’ or certified check, within thirty (30) days from the date of issuance of the attached Final Order (Due Date). Respondent shall: (1) clearly type or write the docket number (CAA-02-2016-1201) on

the check to ensure proper payment; (2) make the check payable to the order of

“Treasurer, United States of America;” and (3) send the check to:

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

Respondent shall send notice of payment to the following:

Robert Buettner, Chief, Air Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2
290 Broadway – 21st Floor
New York, New York 10007

and

Liliana Villatora, Chief, Air Branch
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007

51. If Respondent fails to make full and complete payment of the \$61,000 penalty that is required by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

- a. Interest. If Respondent fails to make payment, or to make partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.
- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
- c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States’ enforcement expenses, including but not limited to attorney fees and costs incurred by the United States

for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.


52. Upon entering into this CAFO, Oxy shall be released of all liability to EPA for the violations alleged herein, relating to the April 7, 2014 EPA inspection. Nothing in this CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation(s) of this CAFO or for Respondent's violation(s) of any other applicable provision of law or regulation, nor shall it be construed as limiting the defenses that Respondent may raise to any such alleged violation(s).
53. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Respondent's alleged violations of the Act identified herein.
54. Nothing in this Consent Agreement and attached Final Order shall relieve Respondent of the duty to comply with all applicable provisions of the Clean Air Act and other environmental laws and it is the responsibility of the Respondent to comply with such laws and regulations.
55. This Consent Agreement, attached Final Order, and any provision herein is not intended to be an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this CAFO or any of its terms and conditions.
56. Respondent explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement and explicitly waives its right to appeal the attached Final Order.
57. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or

communication addressed to, the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

58. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in this action resolved by this Consent Agreement and attached Final Order, except as explicitly provided in Paragraph 50.c. of this CAFO.
59. The Consent Agreement and attached Final Order shall be binding on Respondent and its successors and assignees.
60. Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

Signatures


For Complainant:



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2

4/11, 2016

For Respondent:



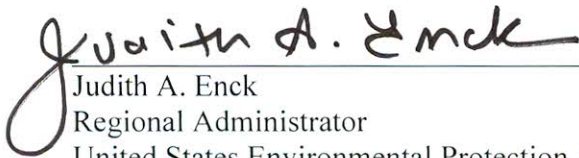
Wade Alleman
Sr. Vice President – Manufacturing, Engineering and Technology
Oxy Vinyls, LP
5005 LBJ Freeway, Suite 2200
Dallas, Texas 75244

3/31, 2016

In the Matter of Oxy Vinyls, LP
CAA-02-2016-1201

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement, *In the Matter of Oxy Vinyls, LP*, CAA-02-2016-1201. This Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.



Judith A. Enck
Regional Administrator
United States Environmental Protection Agency, Region 2

Date: 4.11.16

CERTIFICATE OF SERVICE

I certify that on April 14, 2016, I caused the fully executed Consent Agreement and Final Order in the matter of Oxy Vinyls, LP, reference CAA-02-2016-1201, to be served on the following persons in the manner listed below:

One Original and One Copy by hand delivery to:

- ✓ Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

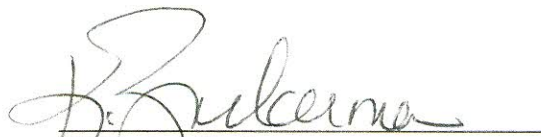
One Copy by Hand delivery to:

- ✓ Erick Ihlenburg
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2, Air Branch
290 Broadway, 16th Floor
New York, New York 10007-1866

One copy by Certified Overnight Delivery to:

- ✓ Bradleigh LeBlanc, Esq.
Senior Counsel
Occidental Chemical Corporation
5005 LBJ Freeway
Dallas, Texas 75244-6119

Dated: April 14, 2016



Katherine Zuckerman
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 2