

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 4

FILED

May 19, 2025

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U.S. EPA REGION 4
HEARING CLERK

In the Matter of:

Brenntag Mid-South, Inc.,

Respondent.

Docket No. CAA-04-2025-0303(b)

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7413(d), and Sections 22.13(b) and 22.18 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 Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without Respondent's admission of violation or any adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 113(d) of the Act.
5. Respondent is **Brenntag Mid-South, Inc.**, a corporation doing business in the Commonwealth of Kentucky. This proceeding pertains to Respondent's facility located at 1405 Highway 136 West, Henderson, Kentucky 42420 (Facility).

III. GOVERNING LAW

6. Any person who violates Section 112(r) of the CAA, 42 U.S.C. § 7412(r), or rules promulgated thereunder, may be assessed a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19. Each day a violation continues may constitute a separate

violation. Civil penalties under Section 113(d) of the Act, 42 U.S.C. § 7413(d), may be assessed by an administrative order.

7. Section 112(r) of the Act 42 U.S.C. § 7412(r), addresses the prevention of release of substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), and other extremely hazardous substances. The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.
8. Pursuant to Sections 112(r)(3) and 112(r)(7) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 C.F.R. Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the “Risk Management Program” (RMProgram) and apply to an owner or operator of a stationary source that has a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.
9. Pursuant to Section 112(r)(7)(B)(iii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 C.F.R. §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a “process” as defined in 40 C.F.R. § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.
10. Pursuant to 42 U.S.C. § 7413(d)(1), the EPA and the United States Department of Justice have jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment.

IV. FINDINGS OF FACTS

11. Respondent is the owner and/or operator of the Facility, which is a “stationary source” as that term is defined by Section 112(r)(2)(C) of the Act, 42 U.S.C. § 7412(r)(2)(C).
12. Respondent has registered an RMPlan with the EPA for its Facility and has developed an RMProgram accidental release prevention program for the Facility.
13. At its Facility:
 - (a) Respondent operates a chemical storage and distribution facility.
 - (b) At all times relevant to the violations alleged in Section V of this Consent Agreement, Respondent had on-site for storage, 50,000 pounds of cyclohexylamine, 1,800,000 pounds of chlorine, 1,500,000 pounds of sulfur dioxide (anhydrous), 265,000 pounds of ammonia (anhydrous), 350,000 pounds of ammonia (conc 20% or greater), and 17,000 pounds of hydrofluoric acid.
 - (c) Respondent has five RMProgram level 3 covered processes and one RMProgram level 2

process, which store or otherwise use cyclohexylamine, chlorine, sulfur dioxide (anhydrous), ammonia (anhydrous), ammonia (conc 20% or greater), and hydrofluoric acid in amounts exceeding their applicable thresholds of 15,000 pounds, 2,500 pounds, 5,000 pounds, 10,000 pounds, 20,000 pounds, and 1,000 pounds, respectively.

14. On August 10, 2023, the EPA conducted an on-site inspection of the RMP program related records and equipment for the purpose of assessing the Respondent's compliance with the RMP program requirements and the implemented recognized and generally accepted good engineering practices (RAGAGEP) for its covered process at its Facility.

15. At the time of the inspection:

- (a) The EPA inspection team observed that the pipes around the two 30,000-gallon ammonia tanks and the sulfur dioxide tank were not consistently labeled. Some pipes were labeled with direction of flow, but many lacked labels identifying their contents. The ammonia piping should be labeled/colored in accordance with the Pipe Marking Guide, American National Standard Institute/American Society of Mechanical Engineers (ANSI/ASME) A13.1 – 2007 Standard for the Identification of Pipes. The standard requires labels of a certain color, depending on the type of material in the pipes, and that the labels identify the contents and direction of flow of said contents.
- (b) Facility representatives provided the EPA inspection team with inspection reports for Ammonia Tanks AA-1 and AA-2. The reports were generated from external inspections and ultrasonic (UT) testing that were conducted on the two 30,000-gallon ammonia tanks on November 02, 2021, by a third-party company, Applied Technical Services. The results from the tests indicate the thickness is below the minimum allowable value on three components for each ammonia tank. Specifically, each report states in observation 2 in the "Observation" column on page 6:

"Multiple shell and head readings were at or below the required minimum thickness. Pitting was present throughout the exterior ranging from 1/32" – 1/16"."

Under the "Recommended Action" column on the same page, each report states:

"Re-rate the vessel using an allowable stress based off the latest edition of the ASME Code Per API-510 8.2 (i.e. 3.5 a design factor vs. the original 4.0 design factor). -OR- Re-rate the vessel to a lower MAWP."

Each report assigns this recommendation a priority ranking of one (1), which is defined as – *"High likelihood/consequence of failure (or) Critical code/standard deficiency (or) May not be fit for service without action."*

16. Respondent did not take action to address the results of the November 2, 2021, UT testing on the Ammonia Tanks AA-1 and AA-2 until after the EPA's RMP inspection on August 10, 2023,

when facility representatives reached out to another contractor, PK Mechanical LLC (PK), to assist with determining if a re-rate of the vessels would be acceptable for the two ammonia tanks. On September 7, 2023, Respondent provided EPA with a document labeled Memorandum for Record: Mechanical Integrity. The document states:

“PK conducted calculations and determined that re-rating our tanks to allowable stress values of the latest ASME design code (rather than the original ASME design code – ASME Sec VIII Div. 1 1993 Edition w/ Winter 1984 Addenda) would be safe. ...PK Mechanical is submitting a formal request for re-rate on our behalf. After official review and pressure testing of vessels, the tanks will be officially re-rated to new allowable stress values.”

17. On June 4, 2024, the EPA issued to Respondent a Notice of Potential Violation and Opportunity to Confer (“NOPVOC”), providing notice that the EPA found that Respondent potentially committed the alleged violations described in Section V of this Consent Agreement and providing Respondent an opportunity to confer with the EPA. On December 10, 2024, representatives of Respondent and the EPA held a meeting to discuss the NOPVOC.

V. ALLEGED VIOLATIONS

18. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
19. Based on the EPA’s compliance monitoring investigation, the EPA alleges that the Respondent violated 40 C.F.R. Part 68, the codified rules governing the Act’s Chemical Accident Prevention Provisions and Section 112(r) of the Act, 42 U.S.C. § 7412(r), when it:
- (a) Failed to ensure and document that equipment complies with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.65(d)(2); and
 - (b) Failed to correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in 40 C.F.R. § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation, as required by 40 C.F.R. § 68.73(e).

VI. STIPULATIONS

20. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
21. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- (a) admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
 - (b) neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;

- (c) consents to the assessment of a civil penalty as stated below ;
- (d) consents to the conditions specified in this CAFO;
- (e) waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
- (f) waives its rights to appeal the Final Order accompanying this CAFO.

22. For the purpose of this proceeding, Respondent:

- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- (d) by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, 42 U.S.C. § 7412(r) and 40 C.F.R. Part 68, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
- (e) waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO;
- (f) agrees to comply with the terms of this CAFO; and
- (g) waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the CAFO.

23. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the Parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

24. Respondent agrees to a civil penalty in the amount of **\$105,144** ("Assessed Penalty"), to be paid within thirty (30) calendar days after the Effective Date of this CAFO.

25. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

26. When making a payment, Respondent shall:

- (a) Identify every payment with Respondent's name and the docket number of this CAFO, **CAA-04-2025-0303(b)**, and
- (b) Concurrently with any payment or within 24 hours of any payment, serve proof of such payment to the following persons:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
r4_regional_hearing_clerk@epa.gov

and

Jordan Noles
Air Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4
noles.jordan@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

27. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7413(d)(5), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this CAFO, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- (a) Interest. Interest begins to accrue from the Effective Date. If the Assessed Penalty is

paid in full within thirty (30) calendar days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) calendar days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7413(d)(5), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is the IRS standard underpayment rate, equal to the Federal short-term rate plus 3 percentage points.

(b) Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of handling collection.

(c) Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.

28. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty per this CAFO, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

(a) Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

(b) Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

(c) Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.

(d) Request that the Attorney General bring a civil action in the appropriate district court to enforce the Final Order and recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and appropriateness of the Assessed Penalty and Final Order shall not be subject to review.

29. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

30. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

31. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send a completed Form 1098-F (“Fines, Penalties, and Other Amounts”) to the Internal Revenue Service (“IRS”) annually with respect to any court order and settlement agreement (including administrative settlements), that requires a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (for example, a copy of Form 1098-F). In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- (a) Respondent shall complete a Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- (b) Respondent shall therein certify that its completed Form W-9 includes Respondent’s correct Tax Identification Number (“TIN”) or that Respondent has applied and is waiting for issuance of a TIN;
- (c) Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center Region 4 contact, Jessica Henderson (Henderson.Jessica@epa.gov), on or before the date that Respondent’s initial penalty payment is due, pursuant to Paragraph 24 of this CAFO, and EPA recommends encrypting Form W-9 email correspondence; and
- (d) In the event that Respondent has certified in its completed Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent by the date that its initial penalty payment is due, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
 - i. notify EPA’s Cincinnati Finance Center of this fact, via email, by the date that Respondent’s initial penalty payment is due; and
 - ii. provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) calendar days of Respondent’s issuance and receipt of the TIN.

Failure to comply with providing Form W-9 or TIN may subject Respondent to a penalty. See 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1.

VIII. EFFECT OF CAFO

32. In accordance with 40 C.F.R. § 22.18(c), Respondent’s full compliance with this CAFO shall only resolve Respondent’s liability for federal civil penalties for the violations and facts specifically alleged above.

33. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall satisfy the requirements of this CAFO; but, 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. 40 C.F.R. § 22.18(c).

34. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
35. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
36. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
37. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
38. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO.
39. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
40. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
41. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
42. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
43. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that

there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

44. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA. If such false or inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
45. It is the intent of the Parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
46. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

IX. EFFECTIVE DATE

47. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

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Complainant and Respondent will Each Sign on Separate Pages

The foregoing Consent Agreement in the matter of **Brenntag Mid-South, Inc., Docket No. CAA-04-2025-0303(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Keriema S. Newman
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

In the Matter of:

Brenntag Mid-South, Inc.,

Respondent.

Docket No. **CAA-04-2025-0303(b)**

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with 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 Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the matter of **Brenntag Mid-South, Inc., Docket No. CAA-04-2025-0303(b)**, were filed and copies of the same were emailed to the Parties as indicated below.

Via email to all Parties at the following email addresses:

To Respondent: Mark J. Steger, Senior Counsel
 Clark Hill
 msteger@clarkhill.com
 130 E. Randolph Street, Suite 3900
 Chicago, IL 60601
 (312) 985-5916

To EPA: Jordan Noles, Case Development Officer
 noles.jordan@epa.gov
 (404) 562-9105

Ashley Short, Attorney Adviser
short.ashley@epa.gov
(404) 562-9654

Regional Hearing Clerk
r4_regional_hearing_clerk@epa.gov