

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Infineum USA, LP

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-02-2011-1210

REGIONAL HEARING
CLERK

2011 NOV 29 P 2:21

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

Preliminary Statement

The United States Environmental Protection Agency (EPA) issues this Consent Agreement and Final Order (CAFO) under the authority of Section 113(d), 42 U.S.C. § 7413(d) the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 et seq., and pursuant to 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 (Consolidated Rules of Practice). The Complainant in this matter is the Director of the Division of Enforcement and Compliance Assistance (DECA), EPA Region 2. The Complainant is delegated, through the Regional Administrator, the authority to issue CAA administrative complaints and consent agreements for 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. The Regional Administrator of EPA Region 2 is duly delegated the authority to execute CAA Section 113(d) Final Orders.

On July 8, 2011, the United States Department of Justice (DOJ) granted the EPA Region 2 request for a waiver of the CAA Section 113(d) 12 month time limitation and penalty amount on EPA's authority to initiate an administrative action in this matter against Infineum USA, LP (Infineum or Respondent).

In accordance with 40 C.F.R. §§ 22.13(b), and 22.18(b), EPA and Respondent enter into this Consent Agreement and propose the attached Final Order to resolve the violations alleged in the Conclusions of Law section of this Consent Agreement.

In this action, EPA finds that Infineum, at its facility, located at 1900 East Linden Avenue, Linden, NJ (Facility), violated 40 C.F.R. Part 63, Subpart A, §§ 63.1 - 63.16 (Part 63 General Standards), 40 C.F.R. Part 63, Subpart FFFF, §§ 63.2430 – 63.2550 (MON MACT), 40 C.F.R. Part 63, Subpart UU, §§ 63.1019 – 63.1039 (MON LDAR), and the Facility's CAA title V operating permit.

For purposes of this proceeding, and to avoid the expense of protracted litigation, Respondent: (1) admits that EPA has jurisdiction over the subject matter as alleged in this Consent Agreement; (2) neither admits nor denies specific factual allegations contained in this Consent Agreement; (3) consents to the terms of agreement set forth in this Consent Agreement; and (4) consents to the issuance of the attached Final Order.

Statutory Background

1. Section 112 of the Act requires the Administrator to publish a list of hazardous air pollutants (HAPs), a list of categories and subcategories of major and area sources of listed HAPs, and to promulgate regulations establishing emission

standards, referred to as National Emissions Standards for Hazardous Air Pollutants (NESHAPs) for each category or subcategory of major and area sources of HAP.

2. Section 112(a)(1) of the Act defines a “major source” as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit ten (10) tons per year (tpy) or more of any HAP or twenty-five (25) tpy or more of any combination of HAPs.

3. Section 112(b)(1) of the Act provides the initial list of HAPs and Section 112(b)(2) requires the Administrator to periodically review the list and, where appropriate, revise it.

4. Section 112(c) of the Act requires the Administrator to publish a list of categories or subcategories of major and area sources of listed HAPs.

5. Section 112(d) of the Act requires the Administrator to promulgate regulations establishing NESHAPs for each category or subcategory of major and area sources of HAPs. NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61. NESHAPs promulgated under the CAA as amended in 1990 are set forth in 40 C.F.R. Part 63. Section 112(d) of the CAA directs EPA to promulgate emissions standards based on the maximum achievable control technology (MACT), but also allows EPA to elect to promulgate, in lieu of MACT standards, emission standards for “area” sources, as that term is defined in Section 112(a) of the Act, that are based on generally available control technology (GACT).

6. Section 112(h) of the Act authorizes EPA to promulgate “design, equipment, work practice, or operational” standards, or combinations thereof, which are consistent with Section 112(d) or (f) of the Act, to the extent that it is not feasible to

prescribe or enforce an emission standard for control of a HAP. Pursuant to Section 112(d)(2)(D) and (E) of the Act, design, equipment, work practice, or operational standards, or combinations thereof, promulgated under Section 112(h) of the Act, are treated as emission standards.

7. 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.

8. Section 113(a)(3) of the Act authorizes the Administrator of EPA to issue an administrative penalty order, in accordance with Section 113(d) of the Act, against any person that has violated or is in violation of the Act, including regulations promulgated under Sections 112 and 114, and permits issued pursuant to a State title V program adopted and approved pursuant to title V of the Act.

9. Section 113(d)(1)(A) and (B) of the Act, authorizes EPA to issue an administrative penalty order against any person whenever, on the basis of any available information, the Administrator finds that such person has or is violating any requirements or prohibitions of title I, III, IV-A, V, or VI of the Act including but not limited to a requirement or prohibition of any rule, order, waiver, permit or plan promulgated, issued or approved under the Act.

10. Section 114(a)(1) of the Act authorizes the Administrator to require owners or operators of emission sources to submit specific information regarding facilities, establish and maintain records, make reports, sample emission points, and to

install, use and maintain such monitoring equipment or methods in order to determine whether any person is in violation of the Act.

11. Section 302(e) of the Act defines the term “person” as an individual, corporation, partnership, association, state municipality, political subdivision of a state, and an agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

Regulatory Background

Part 63 General Standards

12. On March 16, 1994, pursuant to Sections 112 and 114 of the Act, EPA promulgated 40 C.F.R. Part 63, Subpart A, §§ 63.1 – 63.16 (Part 63 General Standards).

13. The Part 63 General Standards set forth definitions and general requirements applicable to all sources subject to any NESHAP promulgated under Section 112 of the CAA, as amended in 1990.

14. 40 C.F.R. § 63.1(a)(4)(i) provides that each relevant standard in 40 C.F.R. Part 63 must identify explicitly whether each provision in the Part 63 General Standards is or is not included in such relevant standard.

15. 40 C.F.R. § 63.1(b) provides that the provisions of 40 C.F.R. Part 63 apply to the owner or operator of any stationary source that: (i) emits or has the potential to emit any HAP listed in or pursuant to Section 112(b) of the Act; and (ii) is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to Part 63.

16. 40 C.F.R. § 63.1(c) provides that if a relevant standard has been established under Part 63, the owner or operator of an affected source must comply with the provisions of that standard and of the Part 63 General Standards, as provided in 40 C.F.R. § 63.1(a)(4).

17. 40 C.F.R. § 63.2 defines "affected source," for the purposes of Part 63, as the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the Act. This definition of "affected source" applies to each Section 112(d) standard for which the initial proposed rule is signed by the Administrator after June 30, 2002.

18. 40 C.F.R. § 63.2 defines "existing source" as any affected source that is not a new source.

19. 40 C.F.R. § 63.2 defines "owner or operator" as any person who owns, leases, operates, controls, or supervises a stationary source.

20. 40 C.F.R. § 63.2 defines "stationary source" as any building, structure, facility, or installation that emits or may emit any air pollutant.

21. Pursuant to 40 C.F.R. § 63.6(c)(1), after the effective date of a relevant standard established under 40 C.F.R. Part 63, the owner/operator of an existing source must comply with such standard by the compliance date established by the Administrator in the applicable Subpart(s) of 40 C.F.R. Part 63.

MON MACT

22. On November 10, 2003, pursuant to Sections 112 and 114 of the Act, EPA promulgated 40 C.F.R. Part 63, Subpart FFFF, §§ 63.2430 – 63.2550, the NESHAP for miscellaneous organic chemical manufacturing (MON MACT).

23. Pursuant to 40 C.F.R. § 63.2435(a), the MON MACT provides requirements for owners and operators of miscellaneous organic chemical manufacturing process units (MCPUs) located at, or that are part of, a major source of HAP emissions as defined in Section 112(a) of the Act. The MON MACT requirements include, among other requirements, emission limits, leak repair, recordkeeping and reporting requirements.

24. Pursuant to 40 C.F.R. § 63.2435(b), an MCU includes equipment necessary to operate a miscellaneous organic chemical manufacturing process, as defined in § 63.2550, that satisfies all of the conditions specified in § 63.2435(b)(1) through (3). An MCU also includes any assigned storage tanks and transfer racks; equipment in open systems that is used to convey or store water having the same concentration and flow characteristics as wastewater; and components such as pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems that are used to manufacture any material or family of materials described in § 63.2435(b)(1)(i) through (v).

25. Pursuant to 40 C.F.R. § 63.2435(b)(1), the MCPU produces any material or family of materials that is described in § 63.2435(b)(1)(i) through (v):

§ 63.2435(b)(1)(i): an organic chemical(s) classified using the 1987 version of SIC code 282, 283, 284, 285, 286, 287, 289, or 386, except as provided in § 63.2435(c)(5);

§ 63.2435(b)(1)(ii): an organic chemical(s) classified using the 1997 version of NAICS code 325, except as provided in § 63.2435(c)(5);

§ 63.2435(b)(1)(iii): quaternary ammonium compounds and ammonium sulfate produced with caprolactam;

§ 63.2435(b)(1)(iv): hydrazine; and/or

§ 63.2435(b)(1)(v): organic solvents classified in any of the SIC or NAICS codes listed in § 63.2435(b)(1)(i) or (ii) that are recovered using nondedicated solvent recovery operations.

26. Pursuant to 40 C.F.R. § 63.2435(b)(2), an MCPU processes, uses, or generates any of the organic HAP listed in Section 112(b) of the Act or hydrogen halide and halogen HAP, as defined in § 63.2550.

27. Pursuant to 40 C.F.R. § 63.2435(b)(3), an MCPU is not an affected source or part of an affected source under another Subpart, except for those process vents from batch operations within a chemical manufacturing process unit (CMPU), as identified in § 63.100(j)(4).

28. Table 12 of the MON MACT lists the Part 63 General Standards provisions that apply, and includes § 63.6(c)(1), which specifies that the owner/operator of an existing source must comply with the compliance date established by the Administrator in the applicable Subpart(s) of 40 C.F.R. Part 63, which for this case is the compliance date of the MON MACT.

29. Pursuant to 40 C.F.R. § 63.2445(b), if a facility is an existing source on November 10, 2003, then the facility must comply with the MON MACT requirements for existing sources no later than May 10, 2008.

30. Pursuant to 40 C.F.R. § 63.2480(a), an owner or operator of an MCPU to which the MON MACT applies must comply with each requirement specified in Table 6 of the MON MACT that applies to equipment leaks, except as specified in paragraphs (b) through (d) of § 63.2480.

31. Table 6 of the MON MACT indicates that as required in § 63.2480, an owner or operator must comply with each requirement specified in Table 6 of the MON MACT that applies to the owner or operators equipment leaks.

32. Table 6, 1.a, of the MON MACT provides the requirements of specific Subparts that the owner or operator must comply with, including 40 C.F.R. Part 63, Subpart UU, for equipment leaks from all equipment that is in organic HAP service as stated in § 63.2480. Table 6, 1.a of the MON MACT also indicates that the owner or operator subject to Subpart UU must comply with the requirements of Subpart UU and the requirements referenced therein, except as specified in § 63.2480(b) and (d).

33. Pursuant to 40 C.F.R. § 63.2520(a), owners or operators subject to the MON MACT must submit each report specified in Table 11 of the MON MACT as applicable.

34. Pursuant to 40 C.F.R. § 63.2520(b) and as specified in Table 11 of the MON MACT, the owner or operator subject to the MON MACT must submit semi-annual compliance reports identifying any failure to comply with the MON MACT requirements.

35. Pursuant to 40 C.F.R. § 63.2520(e), the compliance report must contain the information specified in paragraphs § 63.2520(e)(1) through (10).

36. Pursuant to 40 C.F.R. § 63.2520(e)(5), the compliance report must contain the information on deviations, as defined in § 63.2550, according to paragraphs (e)(5)(i) through (iv) of § 63.2520.

37. Pursuant to 40 C.F.R. § 63.2520(e)(9), the compliance report must include applicable records and information for periodic reports as specified in referenced Subparts, including 40 C.F.R. Part 63, Subpart UU.

38. Pursuant to 40 C.F.R. § 63.2550(c), for an affected source subject to the requirements in 40 C.F.R. Part 63, Subpart UU, the terms used in the MON MACT and Subpart UU have the meaning given them in § 63.1020 of Subpart UU.

39. Pursuant to 40 C.F.R. § 63.2550(i), deviation means any instance in which an affected source subject to the MON MACT, or an owner or operator of such a source fails to:

(1) Meet any requirement or obligation established by the MON MACT including, but not limited to, any emission limit, operating limit, or work practice standard; or

(2) Meet any term or condition that is adopted to implement an applicable requirement in the MON MACT and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Meet any emission limit, operating limit, or work practice standard in the MON MACT during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by the MON MACT.

40. Pursuant to 40 C.F.R. § 63.2550(i), hydrogen halide and halogen HAP means hydrogen chloride, hydrogen fluoride, and chlorine.

41. Pursuant to 40 C.F.R. § 63.2550(i), in organic HAP service means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5% by weight of total organic HAP as determined according to § 63.180(d).

42. Pursuant to 40 C.F.R. § 63.2550(i), miscellaneous organic chemical manufacturing process means all equipment that collectively function to produce a product or isolated intermediate that are materials that are described in § 63.2435(b).

MON LDAR

43. On June 29, 1999, pursuant to Sections 112 and 114 of the Act, EPA promulgated 40 C.F.R. Part 63, Subpart UU, §§ 63.1019 – 63.1039, National Emission Standards for Equipment Leaks – Control Level 2 Standards (MON LDAR).

44. Pursuant to 40 C.F.R. § 63.1019(a), owners and operators subject to the MON MACT (among other referencing Subparts) who choose the Subpart UU compliance option specified in § 63.2480 must comply with the MON LDAR, which applies to control air emissions from equipment leaks. The MON LDAR requirements relate to, among other things, identification of MON LDAR components, monitoring of MON LDAR components, leak repairs, and recordkeeping and reporting.

45. Pursuant to 40 C.F.R. § 63.1020, equipment is defined as each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in regulated material service; and any control devices or systems used to comply with Subpart UU.

46. Pursuant to 40 C.F.R. § 63.1020, referencing Subpart means the Subpart that refers an owner or operator to this Subpart.

Identification, Tagging and Monitoring of Components

47. Pursuant to 40 C.F.R. § 63.1022(a), equipment subject to the MON LDAR must be identified. In accordance with § 63.1022(a), identification may include, among other things, physical tagging of the equipment, identification on a plant site plan, and in log entries, by designation of process unit or affected facility boundaries by some form of weatherproof identification, or by other appropriate methods.

48. Pursuant to 40 C.F.R. § 63.1023(a), the owner or operator of a regulated source subject to the MON LDAR program must monitor regulated equipment as specified in § 63.1023(a)(1) for instrument monitoring and § 63.1023(a)(2) for sensory monitoring.

49. Pursuant to 40 C.F.R. § 63.1023(a)(1)(i), valves in gas and vapor service and in light liquid service must be monitored in accordance with § 63.1025(b).

50. Pursuant to 40 C.F.R. § 63.1023(a)(1)(ii), pumps in light liquid service must be monitored in accordance with § 63.1026(b).

51. Pursuant to 40 C.F.R. § 63.1023(a)(1)(iv), agitators in gas and vapor service and in light liquid service must be monitored pursuant to § 63.1028(c).

52. Pursuant to 40 C.F.R. § 63.1023(a)(2)(i), pumps in light liquid service must be observed in accordance with §§ 63.1026(b)(4) and (e)(1)(v).

53. Pursuant to 40 C.F.R. § 63.1023(b), instrument¹ monitoring, as required under § 63.1023, must comply with the requirements specified in § 63.1023(b)(1) through (b)(6).

¹ Respondent uses a toxic vapor analyzer (TVA) to monitor components for leaks.

54. Pursuant to 40 C.F.R. § 63.1023(b)(1), monitoring must comply with Method 21 of 40 C.F.R. Part 60, Appendix A, except as otherwise provided in § 63.1023.

Valves

55. Pursuant to 40 C.F.R. § 63.1025(a)(1), the owner or operator must comply with § 63.1025 no later than the compliance date specified in the referencing Subpart, which in this case is the MON MACT.

56. Pursuant to 40 C.F.R. § 63.1025(b)(1), valves must be monitored to detect leaks by the method specified in § 63.1023(b) and, as applicable, § 63.1023(c) at the frequency required by § 63.1025(b)(3)(i).

57. Pursuant to 40 C.F.R. § 63.1025(d)(2), after a leak has been repaired, the valve shall be monitored at least once within the first 3 months after its repair. In addition, 40 C.F.R. § 63.1025(d)(2) provides that the monitoring required is in addition to the monitoring required to satisfy the definition of repaired and first attempt at repair.

Pumps

58. Pursuant to 40 C.F.R. § 63.1026(a), the owner or operator must comply with § 63.1026 no later than the compliance date specified in the referencing Subpart, which in this case is the MON MACT.

59. Pursuant to 40 C.F.R. § 63.1026(b)(1), an owner or operator must monitor each pump monthly to detect leaks by the method specified in § 63.1023(b) and, as applicable, § 63.1023(c).

60. Pursuant to 40 C.F.R. § 63.1026(b)(4), each pump must be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal and the owner or operator must document that the inspection was conducted and the date of the inspection. In addition, § 63.1026(b)(4) specifies that if there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the owner or operator must follow the procedure specified in either § 63.1026(b)(4)(i) or (b)(4)(ii).

Agitators

61. Pursuant to 40 C.F.R. § 63.1028(a), the owner or operator must comply with the MON LDAR no later than the compliance date specified in the referencing Subpart, which in this case is the MON MACT.

62. Pursuant to 40 C.F.R. § 63.1028(c)(1), each agitator seal must be monitored monthly to detect leaks by the methods specified in § 63.1023(b) and, as applicable, § 63.1023(c), except as provided in § 63.1021(b), § 63.1036, § 63.1037, or § 63.1028(e) of the MON LDAR.

63. Pursuant to 40 C.F.R. § 63.1028(c)(3), each agitator seal must be checked by visual inspection each calendar week for indications of liquids dripping from the agitator seal. The owner or operator must document that the inspection was conducted and the date of the inspection.

Reporting

64. Pursuant to 40 C.F.R. § 63.1039(b), the owner or operator must identify noncompliance with the MON LDAR requirements in the Periodic Reports required by § 63.2520 of the MON MACT.

CAA Title V Permitting Background**CAA Title V and Implementing Program Requirements**

65. Section 501(2) of the Act provides that the term “major source” means any stationary source (or group of stationary sources located within a contiguous area and under common control) that is a major source as defined in Section 112 of the Act, and/or Section 302 of the Act or part D of subchapter I of the Act.

66. Section 502(a) of the Act provides that after the effective date of any permit program approved or promulgated pursuant to title V of the Act, it shall be unlawful for any person to violate any requirement of a permit issued under title V of the Act or to operate a title V affected source, including a major source or any other source (including an area source) subject to standards or regulations under, among other sections, Sections 112 and 114 of the Act, except in compliance with a permit issued by a permitting authority under title V of the Act.

67. Section 502(b) of the Act requires EPA to promulgate regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency and set forth the procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs.

68. Pursuant to Section 502(b) of title V of the Act, and consistent with title V requirements, 40 C.F.R. Part 70, among other things, sets forth minimum requirements for state operating permits and 40 C.F.R. Part 71, sets forth the federal title V operating program and defines the requirements and procedures by which EPA will issue title V operating permits.

69. Section 502(d)(1) of the Act requires each State to develop and submit to the Administrator a permit program meeting the requirements of title V of the Act.

70. Section 503(a) of the Act provides that any source specified in Section 502(a) of the Act shall become subject to a permit program and shall be required to have a permit to operate.

71. Section 503(b)(2) of the Act provides that the regulations promulgated pursuant to Section 502(b) of the Act must include requirements that the permittee periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the title V operating permit, and promptly report any deviations from permit requirements to the permitting authority.

72. Section 504(a) of the Act directs that each title V operating permit include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every six (6) months, the results of any required monitoring, and any such other conditions as are necessary to assure compliance with applicable requirements of the Act, including the requirements of the applicable implementation plan.

73. Section 502(e) of the Act provides that EPA maintains its authority to enforce title V operating permits issued by a State.

74. Section 504(a) of the Act provides that a title V permit issued to a source must include all regulations applicable to the source.

75. Section 504(c) of the Act provides that a title V compliance certification submitted at the time of application and annually thereafter, shall include a certification regarding compliance with all applicable regulations and requirements applicable to the source.

76. EPA granted interim approval of the New Jersey Title V Operating Permit Program, with an effective date of June 17, 1996. 61 Fed. Reg. 24715 (May 16, 1996).

77. EPA granted final full approval of the New Jersey Title V Operating Permit Program, with an effective date of November 30, 2001. 66 Fed. Reg. 63168 (December 5, 2001).

78. N.J.A.C. 7:27-22.19(d)(3) provides that all New Jersey title V operating permits shall include a provision that requires six-month deviation reports be submitted to New Jersey, the permitting authority.

79. N.J.A.C. 7:27-22.19(f) provides that all New Jersey title V operating permits shall include a provision that requires annual compliance certifications to be submitted to EPA and NJDEP, the permitting authority.

80. On April 1, 2002, New Jersey Department of Environmental Protection (NJDEP) issued the Facility a title V operating permit, #BOP990001 (Title V Permit).

Permit Requirements

81. Reference #1 of "Subject Item: GR2 Subject to MON Subpart Quad F," in Respondent's Title V Permit, includes 40 C.F.R. Subpart FFFF as an applicable requirement.

82. Reference #7 of "Subject Item: FC," in Respondent's Title V Permit, includes 7:27-22.19(f) as an applicable requirement.

83. Reference #14 of "Subject Item: FC," in Respondent's Title V Permit, includes N.J.A.C. 7:27-22.19(d)(3) as an applicable requirement.

Findings of Fact

84. Respondent is the owner and/or operator of a chemical facility located in Linden, New Jersey (Facility).

85. The Facility's title V operating permit indicates that the Facility's total annual HAP emissions exceed 25 tpy for combined HAPs.

86. The Facility has 4 MCPUs (Calcium Phenate (CA PHEN), Dispersant (DISP), Lubricating Oil Flow Improver (LOFI), and Polyolefin Adhesives (POA/OMAHA)) that are part of the Facility.

87. The Facility produces additives for engine oil utilizing the 4 MCPUs.

88. Respondent's Title V Permit indicates that the Facility is listed as SIC Code 2869, Industrial Organic Chemical Producer.

89. The Facility's Title V Permit indicates that the Facility generates numerous HAPs in its MCPUs, including, but not limited to methanol, toluene, phenol, and xylene, which are listed as HAPs under Section 112(b)(1) of the Act.

90. The Facility's 4 MCPUs are not affected sources or part of an affected source under another Subpart other than the MON MACT.

91. The Facility is an existing source on November 10, 2003 and therefore must comply with the MON MACT requirements no later than May 10, 2008.

92. EPA conducted an inspection of the Facility (Inspection) on August 27-28, 2008.

93. During the Inspection, EPA inspectors observed that the Facility was not fully in compliance with the MON LDAR requirements.

94. On September 29, 2010, EPA issued an administrative compliance order (CO).

95. On November 18, 2010 and April 12, 2011, EPA and Respondent held CO conferences.

96. During the November 18, 2010 CO conference (November CO Conference), Respondent provided supplemental information (Supplemental Information) marked confidential that confirm violations in the CO, provided information that demonstrated some of the violations were not supportable, and presented new violations.

97. During the November CO conference, Respondent provided EPA with information outlined in the Supplemental Information for other MON MACT and MON LDAR violations of which EPA was not aware.

98. In between the CO conferences, Respondent provided EPA with a letter dated December 1, 2010 self-disclosing a majority of the violations alleged in the CAFO.

99. In between the CO conferences, Respondent provided EPA with a letter dated December 20, 2010 indicating that one valve, which was not identified as part of the MON MACT program, was finally identified and tagged by Respondent.

100. In between the CO conferences, Respondent continued to work with EPA to verify the MON MACT and MON LDAR violations found in the CO and additional

violations discussed at the CO conference by responding, on February 2, 2011 and February 27, 2011, to two e-mail requests from EPA.

101. On July 13, 2011, Respondent responded to another EPA e-mail requesting more information about the violations.

Valves

102. In its Supplemental Information, Respondent verified that in January 2010 Respondent identified and tagged 6 valves as MON LDAR components.

103. In its Supplemental Information, Respondent verified that in April 2010 Respondent identified and tagged 68 valves as MON LDAR components.

104. In its December 20, 2010 letter, Respondent verified that in December 2010 Respondent identified and tagged 1 valve as a MON LDAR component.

105. In its Supplemental Information, Respondent verified that until the 75 valves were identified and tagged as MON LDAR components, as detailed above, it did not monitor the valves semi-annually.

106. In its February 2, 2011 e-mail response, Respondent verified that valve OM436 was repaired on May 30, 2008 and monitored after the repair on December 19, 2008, which is more than three months from the date of repair.

107. In its July 13, 2011 e-mail response, Respondent indicated that it repaired valve OM183 on December 22, 2008 and monitored after the repair on June 16, 2009, which is more than three months from the date of repair.

108. In its February 27, 2011 e-mail response, Respondent indicated that it repaired valve OM845 on December 24, 2008 and monitored after the repair on

109. In its February 27, 2011 e-mail response, Respondent indicated that it repaired valve OM964 on September 19, 2008 and monitored after the repair on December 23, 2008, which is more than three months from the date of repair.

Pumps

110. In its Supplemental Information, Respondent verified that pumps OM784 and OM811 were not monitored monthly using the toxic vapor analyzers (TVA) to detect leaks during January 2009.

111. In its Supplemental Information, Respondent verified that for 18 weeks between May 2009 and February 2010 it did not document weekly visual inspections for 12 pumps for indications of liquids dripping from the seals.

112. In its Supplemental Information, Respondent verified that for 5 weeks between May 2009 and December 2009, it did not document weekly visual inspections for 1 pump, as described above.

113. In its Supplemental Information and February 2, 2011 e-mail response, Respondent verified that for 13 weeks between July 2009 and February 2010, it did not document weekly visual inspections for 11 pumps, as described above.

Agitators

114. In its Supplemental Information, Respondent verified that it did not monitor agitator OM693 monthly for seven months between May 2008 and January 2009.

115. In its Supplemental Information, Respondent verified that it did not document weekly visual inspections for indications of liquids dripping for agitators OM693 and 7MA20 for 16 weeks between May 2008 and February 2010.

Reporting

116. In its Supplemental Information, Respondent verified that it did not identify the noncompliance, detailed in paragraphs 102 through 115 above, in its MON LDAR periodic reports for July-December 2008, January-June 2009, July-December 2009, and January-June 2010.

117. In its Supplemental Information, Respondent verified that it did not identify noncompliance, detailed in paragraphs 102 through 115 above, in its title V annual certifications for 2008 and 2009.

Conclusions of Law

118. Paragraphs 1- 117 are re-alleged and incorporated herein by reference.

119. From the Findings of Fact set forth above, EPA finds that Infineum is a person within the meaning of Section 302(e) of the Act.

120. From the Findings of Fact set forth above, EPA finds that Infineum is the owner and/or operator of an industrial organic chemical facility, within the meaning of Section 112(a)(9) of the Act.

121. From the Findings of Fact set forth above, EPA finds that the Facility is a stationary source, within the meaning of Sections 112(a)(3) of the Act, and a major source of HAPs, within the meaning of Section 112(a)(1) of the Act.

122. From the Findings of Fact set forth above, EPA finds that Respondent owns and operates 4 MCPUs (Calcium Phenate (CA PHEN), Dispersant (DISP), Lubricating Oil Flow Improver (LOFI), and Polyolefin Adhesives (POA/OMAHA)) that

must meet the compliance requirements of 40 C.F.R. § 63.2435(a) and (b) of the MON MACT.

123. From the Findings of Fact set forth above, EPA finds that the Facility was required to be in compliance with the MON MACT by no later than May 10, 2008 and is required to comply with the MON MACT thereafter.

124. From the Findings of Fact set forth above, EPA finds that Respondent chose to comply with the MON LDAR as specified in § 63.2480(a) and Table 6 of the MON MACT.

125. From the Findings of Fact set forth above, EPA finds that the Facility is subject to a Title V Operating Permit that was issued to Infineum pursuant to N.J.A.C. 7:27-22, 40 C.F.R. Part 70, and title V of the Act.

126. From the Findings of Fact set forth above, EPA finds that Infineum's failure to identify 75 valves by the Facility's practice of tagging, led to Infineum's failure to monitor the valves which are violations of 40 C.F.R. § 63.1022(a) and 63.1025(b)(1), respectively, both of which are specified in § 63.2480(a) and Table 6 of the MON MACT, as well as violations of Sections 112 and 114 of the Act. Each failure is also a violation of Reference #1 of "Subject Item: GR2 of the Facility's Title V Operating Permit, which includes the MON MACT as an applicable requirement.

127. From the Findings of Fact set forth above, EPA finds that Infineum's failure to monitor 4 valves at least once within the first 3 months after a leak repair are violations of 40 C.F.R. § 63.1025(d)(2), which is specified in § 63.2480(a) and Table 6 of the MON MACT, as well as violations of Sections 112 and 114 of the Act. Each

failure is also a violation of Reference #1 of "Subject Item: GR2 of the Facility's Title V Operating Permit, which includes the MON MACT as an applicable requirement.

128. From the Findings of Fact set forth above, EPA finds that Infineum's failure to monitor 2 pumps monthly to detect leaks are violations of § 63.1026(b)(1), which is specified in § 63.2480(a) and Table 6 of the MON MACT, as well as violations of Sections 112 and 114 of the Act. Each failure is also a violation of Reference #1 of "Subject Item: GR2 of the Facility's Title V Operating Permit, which includes the MON MACT as an applicable requirement.

129. From the Findings of Fact set forth above, EPA finds that Infineum's failure to document weekly visual inspections for 12 pumps for indications of liquids dripping from the pump seal are violations of § 63.1026(b)(4), which is specified in § 63.2480(a) and Table 6 of the MON MACT, as well as violations of Sections 112 and 114 of the Act. Each failure is also a violation of Reference #1 of "Subject Item: GR2 of the Facility's Title V Operating Permit, which includes the MON MACT as an applicable requirement.

130. From the Findings of Fact set forth above, EPA finds that Infineum's failure to monitor an agitator seal monthly is a violation of § 63.1028(c)(1), which is specified in § 63.2480(a) and Table 6 of the MON MACT, as well as violations of Sections 112 and 114 of the Act. Each failure is also a violation of Reference #1 of "Subject Item: GR2 of the Facility's Title V Operating Permit, which includes the MON MACT as an applicable requirement.

131. From the Findings of Fact set forth above, EPA finds that Infineum's failure to document weekly visual inspections for indications of liquids dripping from

2 agitators are violations of § 63.1028(c)(3), which is specified in § 63.2480(a) and Table 6 of the MON MACT, as well as violations of Sections 112 and 114 of the Act. Each failure is also a violation of Reference #1 of "Subject Item: GR2 of the Facility's Title V Operating Permit, which includes the MON MACT as an applicable requirement.

132. From the Findings of Fact set forth above, EPA finds that each of Infineum's 4 failures to identify noncompliance with the MON LDAR in the MON LDAR periodic reports are violations of § 63.1039(b), which is specified in § 63.2480(a) and Table 6 of the MON MACT, as well as violations of Sections 112 and 114 of the Act. Each failure is also a violation of Reference #1 of "Subject Item: GR2 of the Facility's Title V Operating Permit, which includes the MON MACT as an applicable requirement.

133. From the Findings of Fact set forth above, EPA finds that each of Infineum's 2 failures to identify noncompliance in the Title V Annual Certifications, are violations of Reference #7 of "Subject Item: FC of the Facility's Title V Operating Permit and title V of the Act.

Consent Agreement

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

134. Pursuant to Section 113(d) of the Act, Respondent shall pay a civil penalty of **\$346,444**. Respondent shall have the option of paying the entire \$346,444, 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-02-2011-1210) 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:

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

and

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

135. If Respondent fails to make full and complete payment of the **\$346,444** 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 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.

136. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Respondent's alleged violations of the Act set forth herein.

137. Respondent has read the Consent Agreement and consents to the terms and issuance as a Final Order.

138. 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.

139. This Consent Agreement and attached Final Order shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

140. 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.

141. 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.

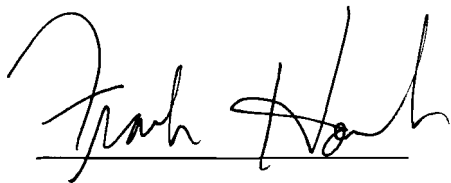
142. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

143. 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.

144. The Consent Agreement and attached Final Order shall be binding on Respondent and its successors and assignees.

145. 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.


For Respondent:



Frank Horneck, Vice-President &
Global Manufacturing Manager
Infineum USA, LP

Date 10/19/11

For Complainant:



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

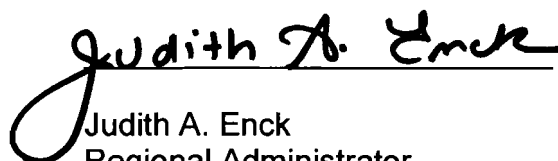
Date NOVEMBER 17, 2011

In the Matter of Infineum USA, LP
CAA-02-2011-1210

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of Infineum USA, LP, CAA-02-2011-1210. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.

DATE: 11/22/11



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

CERTIFICATE OF SERVICE

I certify that the attached Consent Agreement and Final Order (CAFO), dated 11/22/2011 was sent in the following manner to the addressees listed below.

Original and One Copy Delivered by hand to Regional Hearing Clerk's Office:

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

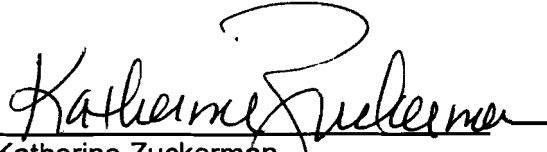
Copy by Hand to:

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

and copy to:

Annette L. Poblete
Counsel-Americas
Infineum USA, LP – Linden Law Department
P.O. Box 710, 1900 East Linden Avenue
Linden, New Jersey 07036

Dated: November 29, 2011


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