

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS**

**IN THE MATTER OF:**

**Air Products and Chemicals, Inc.**

**Respondent**

**New Orleans, Louisiana**

**CONSENT AGREEMENT AND  
FINAL ORDER**

**EPA DOCKET NO. CAA-06-2020-3352**

**CONSENT AGREEMENT AND FINAL ORDER**

The Director, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Air Products and Chemicals, Inc., located in New Orleans, Louisiana (“Respondent” or “Air Products”), in the above referenced action, have agreed to simultaneously commence and resolve this matter through issuance of this Consent Agreement and Final Order (“CAFO”).

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act, as amended (“CAA” or “the Act”), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), 22.18(b)(3), and 22.34.

2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A).

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO; however, Respondent neither admits nor denies the specific factual allegations

and legal conclusions contained in this CAFO.

4. Respondent waives any right to contest the allegations in the CAFO and its right to appeal the Final Order set forth herein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Respondent does not waive any rights or defenses which have been raised or could be raised in any state law proceeding. This CAFO may not be used in any federal or state proceeding except proceedings by EPA to enforce this CAFO.

6. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil monetary penalties for the violations alleged in the CAFO.

7. Respondent consents to the issuance of this CAFO, and consents to the assessment and payment of the stated federal civil monetary penalty in the amount and by the method set out in this CAFO.

8. Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this CAFO.

9. Nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, and criminal authorities, or that of other federal, state, or local agencies or departments to obtain penalties or injunctive relief under federal, state, or local laws or regulations.

10. Respondent represents that the undersigned representative is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind the Respondent to the terms and conditions of this CAFO.

11. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

## **II. STATUTORY AND REGULATORY BACKGROUND**

12. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of regulated substances or other extremely hazardous substances and to minimize the consequences of any such release that does occur.

13. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate regulations dictating release prevention, detection, and correction requirements.

14. On June 20, 1996, the EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the Act.

15. Pursuant to 40 C.F.R. § 68.10(a), an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process (“Covered Process”), as determined under 40 C.F.R. § 68.115, shall comply with the requirements of 40 C.F.R. Part 68 no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under Section 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

16. Pursuant to 40 C.F.R. § 68.12(a), an owner or operator of a stationary source subject to Part 68 requirements must submit a Risk Management Plan (“RMP”), as provided in 40 C.F.R. Part 68 Subpart G (§§ 68.150-68.185), that reflects all covered processes at the

stationary source.

17. 40 C.F.R. Part 68 provides general requirements applicable to owners or operators of a stationary source subject to Part 68.

18. 40 C.F.R. Part 68 also establishes requirements that apply to an owner or operator depending on whether the stationary source operates processes subject to one of three “Programs” -- Program 1, Program 2, and Program 3, as these program levels are defined in 40 C.F.R. § 68.10.

19. Pursuant to 40 C.F.R. § 68.12(d), the owner or operator of a stationary source with a process subject to the “Program 3” requirements of the Part 68 regulations, as determined pursuant to 40 C.F.R. § 68.10(d), must comply with the chemical accident prevention requirements of 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program, at 40 C.F.R. §§ 68.65-68.87).

20. Pursuant to Sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA, including, but not limited to, a requirement or prohibition of any rule promulgated under the CAA, other than those requirements specified in Sections 113(a)(1), 113(a)(2) or 113(d)(1)(A) of the CAA (42 U.S.C. §§ 7413(a)(1), 7413(a)(2), or 7413(d)(1)(A)), the Administrator may issue an order assessing a civil administrative penalty.

21. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. 7413(d)(1), and as adjusted by the transmittal of the 2019 Annual Civil Monetary Penalty Inflation Adjustment Rule (84 Fed. Reg. 2056 and corrected by 84 Fed. Reg. 5955), 40 C.F.R. § 19.4 and mandated by the Amendments to the EPA’s Civil Penalty Policies to Account for Inflation (effective January 15, 2018), the Administrator may assess a civil penalty of up to \$47,357 per violation per day of

violation occurring after November 2, 2015 where penalties are assessed on or after February 6, 2019.

22. “Covered process” is defined in 40 C.F.R. § 68.3 as a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

23. “Owner or operator” shall mean any person who owns, leases, operates, controls, or supervises a stationary source.

24. “Person” is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as including 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.

25. “Process” is defined in 40 C.F.R. § 68.3 as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

26. “Regulated substance” is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to Section 112(r)(3) of the CAA as amended, in § 68.130.

27. “RMP” is defined in 40 C.F.R. § 68.3 as the risk management plan required under subpart G of 40 C.F.R. Part 68.

28. “Stationary source” is defined in Section 112(r)(2)(C) of the CAA and 40 C.F.R. § 68.3 as any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common

control), and from which an accidental release may occur.

29. “Threshold quantity” is defined in 40 C.F.R. § 68.3 as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

30. Respondent is incorporated and authorized to do business in the State of Louisiana.

31. Respondent is a “person” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).

32. At all times relevant to this CAFO, Respondent owned and operated the facility located at 14700 Intracoastal Blvd., New Orleans, Louisiana 70129 (“Facility”).

33. The Facility is an industrial gas manufacturing facility with the Standard Industrial Classification (SIC) code 2813.

34. Respondent produces, processes, stores, or handles more than the threshold quantities of a flammable substance identified in 40 C.F.R. § 68.130.

35. The regulated flammable substance that is held above the threshold quantities identified in 40 C.F.R. § 68.130 is hydrogen.

36. Based on the quantity of regulated substance present at the facility, the facility’s SIC code, and an evaluation of off-site receptors, the covered process in question at the Respondent’s facility is subject to Program 3 of the RMP regulations.

37. On May 23, 2019, the “A” liquid hydrogen plant was being started-up following a planned outage. Operators were in the process of pressurizing the plant through the feed driers with hydrogen when a nitrogen purge hose, which had been left in service, failed and ignited.

38. A post incident root cause analysis investigation was conducted by Respondent regarding the May 23, 2019 fire. It was determined that the best-known cause or root cause of the event was operator error and failure to follow established procedures.

#### **IV. VIOLATION**

**Count 1: 40 C.F.R. § 68.69(a)(1)(vii) - Failure to implement operating procedures**

39. Pursuant to 40 C.F.R. § 68.69(a)(1)(vii),

“(a) The owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements. (1) Steps for each operating phase: (vii) Startup following a turnaround, or after an emergency shutdown.”

40. Air Products did not properly implement operating procedures by leaving the temporary hose in place after completion of the maintenance activity and final purging, which is a violation of 40 C.F.R. § 68.69(a)(1)(vii).

#### **V. CIVIL PENALTY AND TERMS OF SETTLEMENT**

41. Pursuant to the authority granted in Sections 113(d) of the CAA, 42 U.S.C. § 7413(d), and taking into consideration the size of the business, the economic impact of the penalty on the business, the violator’s full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, the parties agree that thirty-eight thousand dollars (\$38,000) is an appropriate penalty to resolve this matter.

42. Within thirty (30) days of this fully executed CAFO, Respondent shall pay \$38,000 by cashier’s check, certified check, or wire transfer made payable to “Treasurer, United States of America, EPA - Region 6.” Payment shall be remitted in one of five (5) ways: regular

U.S. Postal Service mail, to include certified mail; overnight mail; wire transfer; Automated Clearinghouse for receiving US currency; or Online Payment. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. FedEx), the check(s) should be remitted to:

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

Contact: Warren Stroman  
225-621-1554

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of U.S. Treasury facility:  
5700 Rivertech Court



Riverdale, MD 20737

Contact – Jesse White (301) 887-6548

For Online Payment:

[WWW.PAY.GOV](http://WWW.PAY.GOV)

Enter sfo 1.1 in search field

Open form and complete required fields.

PLEASE  
NOTE:

The docket number CAA 06-2020-3352 shall be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following:

Carlos Flores  
Chemical Accident Section (6ECDAC)  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, Texas 75270-2102  
Flores.Carlos@epa.gov

Lorena Vaughn  
Region 6 Hearing Clerk (6RC-D)  
U.S. EPA Region 6  
1201 Elm Street, Suite 500  
Dallas, Texas 75270-2102  
Vaughn.Lorena@epa.gov

43. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States

Treasurer.

44. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the

United States and a charge to cover the costs of processing and handling a delinquent claim.

Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

45. EPA will also assess a fifteen - dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

46. Pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis, a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorney's fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent (10%) of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

47. This CAFO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of any equipment or technology installed by the Respondent in connection with any additional settlement terms undertaken pursuant to this CAFO. Nothing in this CAFO shall be construed to prohibit or prevent the federal, state, or local government from developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required.

48. This document constitutes a “Final Order” as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of “prior such violations.”

#### **VI. RETENTION OF ENFORCEMENT RIGHTS**

49. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of federal or state laws, regulations, statutes, or permitting programs.

50. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.

51. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, or regulated or other extremely hazardous substances at, on, or from the Respondent’s facility.

52. Furthermore, nothing in this CAFO shall be construed to prevent or limit

EPA's civil, injunctive, or criminal authorities, or that of other federal, state, or local agencies or departments to obtain penalties or injunctive relief under other federal, state, or local laws, regulations, or subparts thereof.

53. The EPA and Respondent agree to the use of electronic signatures for this matter.

The EPA and Respondent further agree to electronic service of this Order by email to the following:

To EPA:

*clay.jeffery@epa.gov*

To Respondent:

*DOUGHEJJ@airproducts.com*

#### **VII. COSTS**

53. Each party shall bear its own costs and attorney's fees.

**IT IS SO AGREED:**

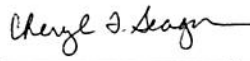
**FOR THE RESPONDENT:**

Date: 5/07/2020

/s/ Gary A. Senior  
Industrial Gases South Line Manager  
Air Products and Chemicals, Inc.

**FOR THE COMPLAINANT:**

Date: May 11, 2020



Digitally signed by CHERYL SEAGER  
DN: c=US, o=U.S. Government, ou=Environmental  
Protection Agency, cn=CHERYL SEAGER,  
0.9.2342.19200300.100.1.1=68001003651793  
Date: 2020.05.11 16:14:20 -0500

Cheryl T. Seager, Director  
Enforcement and  
Compliance Assurance Division  
U.S. EPA Region 6

**FINAL ORDER**

Pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order 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. This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement, including the assessment of civil penalties. In accordance with 40 C.F.R. Part 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 5/12/2020

**Rucki, Thomas**  
Thomas Rucki  
Regional Judicial Officer  
U.S. EPA, Region 6

Digitally signed by Rucki, Thomas  
DN: cn=Rucki, Thomas,  
email=Rucki.Thomas@epa.gov  
Date: 2020.05.12 10:54:12 -05'00'

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, the original and one copy of the foregoing Consent Agreement and Final Order was electronically delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

**VIA ELECTRONIC MAIL:**

Mr. James Dougherty, Esquire  
DOUGHEJJ@airproducts.com

**JEFFREY CLAY**

Digitally signed by JEFFREY CLAY  
DN: c=US, o=U.S. Government, ou=Environmental  
Protection Agency, cn=JEFFREY CLAY,  
0.9.2342.19200300.100.1.1+68001003652675  
Date: 2020.05.13 11:32:24 -05'00'

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U.S. EPA Region 6  
Dallas, Texas