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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

2023 JUN 17 PM 4:47
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

Kuraray America, Inc.,

Respondent.

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Docket No. CAA-06-2023-3331

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Kuraray America, Inc. (“Respondent”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d).
2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.34, of the

EPA's intent to issue an order assessing penalties for these alleged violations.

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division of EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondent is Kuraray America, Inc., an entity incorporated in the state of Delaware and conducting business in the state of Texas.

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The objective of Section 112(r) is to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

6. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), requires the Administrator to promulgate a list of regulated substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires the Administrator to establish a threshold quantity for any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The list of regulated substances and respective threshold quantities is codified at 40 C.F.R. § 68.130.

7. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for stationary sources with threshold quantities of regulated substances listed pursuant to Section

112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68 – Chemical Accident Prevention Provisions, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

8. The regulations at 40 C.F.R. Part 68 require owners and operators to develop and implement a Risk Management Program at each stationary source with over a threshold quantity of regulated substances. The Risk Management Program must include, among other things, a hazard assessment, a prevention program, and an emergency response program. The Risk Management Program is described in a Risk Management Plan (RMP) that must be submitted to the EPA.

9. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source subject to 40 C.F.R. Part 68 no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

10. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68 apply to each program level of covered processes.

11. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and if it is in a specified North American Industrial Classification System code or is subject to the OSHA process safety management standard, 29 C.F.R. 1910.119.

12. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition

of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$51,796 for violations that occur after November 2, 2015, and are assessed after January 12, 2022.

Definitions

13. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any 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.

14. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and the regulation at 40 C.F.R. § 68.3 define “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

15. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3 define “stationary source,” in part, 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.

16. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

17. The regulation at 40 C.F.R. § 68.3 defines “threshold quantity” 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.

18. The regulation at 40 C.F.R. § 68.3 defines “process” 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.

19. The regulation at 40 C.F.R. § 68.3 defines “covered process” as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

EPA Findings of Fact and Conclusions of Law

20. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

21. Respondent is the owner and operator of a facility located at 11500 Bay Area Blvd, Pasadena, TX 77507 (the “Facility”).

22. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, the EPA conducted an inspection of the Facility on April 22-25, 2019, to determine Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 (the “Inspection”).

23. On May 19, 2018, there was an incident at the Facility that resulted in an accidental release (the “Incident”). Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, the EPA requested, and Respondent provided, documentation and information concerning the

Incident and Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

24. The EPA reviewed the documentation and information received from Respondent and articulated the EPA's position concerning Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

25. The Facility is a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3.

26. Respondent operates four production lines for the production of ethylene-vinyl alcohol copolymers, each involving a polymerization reaction in a pressurized chemical reactor supplied with the feedstock ethylene, and the storage, handling, and reaction of ethylene at the facility are a "process", as defined by 40 C.F.R. § 68.3.

27. Ethylene is a "regulated substance" pursuant to Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3. The threshold quantity for ethylene, as listed in 40 C.F.R. § 68.130 is 10,000 pounds.

28. Respondent has greater than a threshold quantity of ethylene in a process at the Facility, meeting the definition of "covered process" as defined by 40 C.F.R. § 68.3.

29. From the time Respondent first had on-site greater than a threshold quantity of ethylene in a process, Respondent was subject to the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68 because it was the owner or operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

30. From the time Respondent first had on-site greater than a threshold quantity of Ethylene in a process, Respondent was required to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 prevention requirements because, pursuant to 40 C.F.R.

§ 68.10(i), the covered process at the Facility did not meet the eligibility requirements of Program 1 and is in North American Industry Classification System code 325199.

EPA Findings of Violation

31. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

32. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

Count 1 – Safe Work Practices

33. Subparagraph (d) of 40 C.F.R. § 68.69 requires the owner or operator of a covered process to develop and implement safe work practices to provide for the control of hazards during operations such as lockout/tagout; confined space entry; opening process equipment or piping; and control over entrance into a stationary source by maintenance, contractor, laboratory, or other support personnel. These safe work practices shall apply to employees and contractor employees.

34. On May 19, 2018, Respondent failed to control hazards during operations by allowing personnel in the process vicinity during upset conditions linked to the accidental release of the regulated substance.

35. By failing to identify risks for persons accessing the covered process on May 19, 2018, during upset conditions Respondent failed to adequately provide for the control of hazards during operation with safe work practices as required by 40 C.F.R. § 68.69(d) and violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2 – Operating Procedures

36. Pursuant to 40 C.F.R. § 68.69(a) the owner or operator of a covered process must

develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with process safety information addressing, among other things, the steps for each operating phase, operating limits and consequences of deviation, and safety and health considerations such as special and unique hazards.

37. Operating procedures developed and implemented by Respondent for EVAL reactor 1200—a covered process—did not identify and evaluate phase change of ethylene.

38. Respondent's failure to develop and implement operating procedures with clear instructions related to managing a phase change of ethylene in reactor vessel 1200 and identifying risks associated with a phase change of ethylene in reactor vessel 1200 is a failure to provide clear instructions for safely conducting activities involved in this covered process, violating 40 C.F.R. § 68.69(a) and Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3 – Training

39. Pursuant to 40 C.F.R. § 68.71(a) each employee involved in operating a Program 3 process shall be trained in the operating procedures as specified in section 68.69, with emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

40. The training program implemented by the Respondent did not place sufficient emphasis on the emergency operations, corrective steps, and safe work practices associated with exceedance of the high-pressure limits of reactor vessel 1200 and the related system alarms to address the events of May 19, 2018.

41. By failing to emphasize safety relevant operating procedures and safe work practices, Respondent's training program failed to satisfy the requirements of 40 C.F.R. §

68.71(a) and violates Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 4 – Mechanical Integrity

42. Pursuant to 40 C.F.R. § 68.73(d), inspections and tests shall be performed on process equipment of a covered process at intervals consistent with applicable manufacturers' recommendations and good engineering practices.

43. At the time of the inspection, documents produced by the Respondent indicated overdue mechanical integrity inspections on certain elements of the covered process.

44. Respondent's failure to conduct certain mechanical integrity inspections at appropriate intervals is a violation of 40 C.F.R. 68.73(d) and Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 5 – Emergency Response Program

45. Subparagraph (a)(4) of 40 C.F.R. § 68.95 requires that owner or operator of a process covered by Programs 2 or 3 shall develop or implement an emergency response program that includes procedures for reviewing and updating a written emergency response plan.

46. At the time of the inspection, Respondent's emergency response plan did not specifically cite to the procedure for reviewing and updating the emergency response plan.

47. Without such mention of the facility's reviewing procedures, Respondent's emergency response program does not satisfy the requirements of 40 C.F.R. § 68.95(a)(4) in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 6 – Hot Work Permit Program

48. The regulations applying to Program 3 process in 40 C.F.R. § 68.85 require an owner or operator to issue a hot work permit for hot work operations conducted on or near that covered process.

49. One hot work permit issued by the Respondent and reviewed by EPA during the Inspection lacked a required signature.

50. Respondent's failure to obtain all required signatures when issuing a hot work permit is a violation of 40 C.F.R. § 68.85 and Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

51. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the performance of the Supplemental Environmental Project (SEP) set forth herein;
- e. consents to the issuance of any specified compliance or corrective action order;
- f. consents to any conditions specified herein;
- g. consents to any stated Permit Action;
- h. waives any right to contest the allegations set forth herein; and
- i. waives its rights to appeal the Final Order accompanying this Consent Agreement.

52. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

53. Respondent and EPA agree to conciliate this matter without the necessity of a

formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

54. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of **One Hundred Twelve Thousand, Five Hundred Twenty-Two Dollars (\$112,522)**, as set forth below.

55. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

56. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Lorena S. Vaughn
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ORC)
Dallas, Texas 75270-2102
vaughn.loreana@epa.gov; and

Sherronda Phelps
Enforcement and Compliance Assurance Division
Air Enforcement Branch
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ECDAC)
Dallas, Texas 75270-2101
Phelps.Sherronda@epa.gov

57. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the

full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Supplemental Environmental Project

58. Respondent has agreed to undertake an emergency planning and preparedness supplemental environmental project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvement. Respondent worked with three entities involved in local emergency responses to develop the SEP. The SEP shall involve the purchase of equipment, training, training equipment, and community emergency preparedness efforts for organizations involved in responding to local industrial emergencies. The individual elements, involved entities, and Respondent's costs of performing the SEP are described in more detail in Attachment A (incorporated herein by reference) to this Consent Agreement and Final Order. The SEP shall be completed no later than six (6) months from the effective date of this Consent Agreement and Final Order.

59. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's *2015 Update to the 1998 Supplemental Environmental Projects Policy*, (March 10, 2015). The SEP advances at least one of the objectives of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), by improving the ability of local emergency responders to safely address industrial

incidents involving hazardous material and providing guidance to the local community on ways to protect itself from industrial disasters, and thereby protecting human health and the environment. The SEP is not inconsistent with any provision of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). The SEP relates to the alleged violations and is designed to reduce the overall risk to public health and/or the environment potentially affected by the alleged violations, specifically by improving the effectiveness of emergency responses and providing tools to the public to protect itself in the event of environmental releases.

60. The Respondent is responsible for the satisfactory completion of the SEP described in the foregoing Paragraphs and Attachment A. The total expenditure for the SEP shall be no less than **Two Hundred Thirteen Thousand, Five Hundred Dollars (\$213,500)**.

61. The Respondent hereby certifies that the cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate, and that the Respondent in good faith estimates that the cost to implement the SEP is \$213,500.

62. The Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

63. If Respondent's implementation of the SEP as described in Attachment A does not expend the full amount set forth in this agreement, and if EPA determines that the amount remaining reasonably could be applied toward the purchase of additional emergency response equipment or other emergency response resources consistent with the items in Attachment A, Respondent may submit, subject to written EPA approval, a proposal to include such expenditures for fulfilment of the terms of this agreement.

64. The Respondent hereby certifies that as of the date of this Consent Agreement and Final Order, the Respondent is not required to perform or develop the SEP by any federal, state,

or local law or regulation; nor is the Respondent required to perform or develop the SEP by any other agreement, grant, or as injunctive relief in this or any other case. The Respondent further certifies that the SEP is not a project that the Respondent was planning or intending to construct, perform, or implement other than in settlement of this action. Finally, the Respondent certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for this SEP, and that the Respondent will not receive reimbursement for any portion of the SEP from another person or entity.

65. The Respondent also certifies that Respondent, and SEP recipient(s) are not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in this section and Attachment A.

66. Any public statement, oral or written, in print, film, or other media, made by the Respondent making reference to the SEP under this Consent Agreement and Final Order from the date of its execution of this Consent Agreement and Final Order shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action against Kuraray America, Inc., on behalf of the EPA to enforce federal laws."

67. For federal income tax purposes, the Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

SEP Completion Report

68. The Respondent shall submit a SEP Completion Report to EPA within thirty (30) days after completion of the SEP under this Consent Agreement and Final Order. The SEP Completion Report shall contain the following information:

- A. A detailed description of the SEP as implemented;

B. A description of any operating or logistical problems encountered and the solutions thereto;

C. Itemized final costs with copies of receipts for all expenditures;

D. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and

E. A description of the environmental, emergency preparedness, and/or public health benefits resulting from implementation of the SEP. The Respondent agrees that failure to timely submit the final SEP Completion Report shall be deemed a violation of this Consent Agreement and Final Order subject to stipulated penalties pursuant to Paragraph 73.D.

69. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

70. The Respondent shall submit the following certification in the SEP Completion Report, signed by a responsible corporate official:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

71. After receipt of the SEP Completion Report described in this section, EPA will notify the Respondent, in writing: (a) regarding any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (b) to indicate that EPA concludes that the SEP has been completed satisfactorily; or (c) to determine that the SEP has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraphs 73-77 below.

72. If EPA elects to exercise option (a) in Paragraph 71 above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, then EPA shall permit the Respondent the opportunity to object in writing to the notification of deficiency given pursuant to Paragraph 71 within fifteen (15) days of receipt of such notification. EPA and the Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon the Respondent. The Respondent agrees to comply with any requirements imposed by EPA necessary to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as reasonably contemplated herein, stipulated penalties shall be due and payable by Respondent to EPA in accordance with the following paragraphs.

Stipulated Penalties for Failure to Complete SEP or Failure to Spend Agreed-On Amount

73. In the event that the Respondent fails to comply with any of the terms or provisions of this Consent Agreement and Final Order relating to the performance of the SEP

described in Attachment A of this Consent Agreement and Final Order and/or to the extent that the actual expenditures for the SEP does not equal or exceed the cost of the SEP described in above, the Respondent shall be liable for stipulated penalties according to the provisions set forth below:

A. Except as provided in subparagraph (B) immediately below, if the SEP has not been satisfactorily completed within six (6) months of the Effective Date of the Consent Agreement and Final Order and Respondent has not made good faith and timely efforts to complete the project satisfactorily, pursuant to this Consent Agreement and Final Order, the Respondent shall pay a stipulated penalty to the United States in the amount of \$215,000.

B. If Respondent does not satisfactorily complete the SEP, including spending the minimum amount on the SEP set forth above, Respondent shall pay a stipulated penalty to the United States in the amount of \$215,000. "Satisfactory completion" of the SEP is defined as Respondent spending no less than \$213,500 to complete all of the expenditures described in Attachment A within six (6) months of the Effective Date of the Consent Agreement and Final Order.

C. If the Respondent fails to timely complete the SEP (not including the SEP Completion Report) for any reason, the Respondent shall pay stipulated penalties as follows:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 500
16th through 30th day	\$ 1,000
31st day and beyond	\$ 2,500

D. For failure to submit the SEP Completion Report required by this agreement, the Respondent shall pay a stipulated penalty in the amount of \$500 for each day after the report

was originally due, until the report is submitted.

74. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole determination of EPA.

75. Stipulated penalties for Paragraphs 73.C and 73.D above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.

76. Respondent shall pay stipulated penalties not more than thirty (30) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraphs 55-56 herein.

77. The EPA may, in its unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement and Final Order.

Dispute Resolution

78. If the Respondent objects to any decision or directive of EPA, the Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Chief, Chemical Accident Enforcement Section
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1201 Elm St, Suite 500
Dallas, TX 75270-2101

Chief, RCRA & Toxics Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1201 Elm St., Suite 500
Dallas, TX 75270-2101

79. The Chemical Accident Enforcement Section Chief (Chief) or his designee, and

the Respondent shall then have an additional fifteen (15) calendar days from receipt by EPA of the Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Chief and the Respondent, the agreement shall be reduced to writing and signed by the Chief and the Respondent and incorporated by reference into this Consent Agreement and Final Order.

80. If no agreement is reached between the Chief and the Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division (Division Director) or his designee. The Division Director and the Respondent shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this Consent Agreement and Final Order. If the Division Director and the Respondent are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the Consent Agreement and Final Order.

Notification

81. Unless otherwise specified elsewhere in this Consent Agreement and Final Order, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA: Sherronda Phelps
Enforcement and Compliance Assurance Division
Air Enforcement Branch
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ECDAC)
Dallas, Texas 75270-2101

Respondent: Frank Taylor
Director of Corporate Governance & Corporate Counsel
Kuraray America, Inc.
3700 Bay Area Blvd., Ste 680
Houston, TX 77058

Modification

82. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of all parties and approval of the Regional Judicial Officer. However, the Regional Judicial Officer need not approve written agreements between the parties modifying the specified emergency response equipment in Attachment A and written agreements between the parties modifying for good cause the SEP schedules in Attachment A. The Director of the Enforcement and Compliance Assurance Division shall sign the written agreements that do not require Regional Judicial Officer approval and said written agreements shall be filed with the Regional Hear Clerk.

Termination

83. At such time as Respondent believes that it has complied with all terms and conditions of this Consent Agreement and Final Order, Respondent may request that EPA advise whether this Consent Agreement and Final Order has been satisfied and terminated. EPA will respond to said request as expeditiously as possible. This Consent Agreement and Final Order shall terminate when all actions required to be taken by this Consent Agreement and Final Order have been completed, and Respondent has been notified by the EPA in writing that this Consent Agreement and Final Order has been satisfied and terminated.

No EPA Liability

84. Neither EPA nor the United States Government shall be liable for any injuries or damages to persons or property resulting from acts or omissions of the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns or contractors in carrying out activities pursuant to this Consent Agreement and Final Order, nor shall the EPA or the United States Government be held out as a party to any contract entered into by the Respondent in carrying out activities pursuant to this Consent Agreement and Final Order.

Effect of Settlement and Reservation of Rights

85. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

86. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

87. Complainant does not require any further abatement by Respondent as part of this Consent Agreement and Final Order. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

88. The settlement does not require any specific corrective action.

89. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and

Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

90. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

91. By signing this Consent Agreement, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

92. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

93. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

94. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

95. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this

Consent Agreement and Final Order by email to the following:

To EPA: *Taylor.Nathan@epa.gov*

To Respondent: *Tom.Abrey@Kuraray.com*

RESPONDENT:
KURARAY AMERICA, Inc.

Date: April 10, 2023

Abrey, Thomas Digitally signed by Abrey, Thomas
Date: 2023.04.10 10:01:18 -05'00'

Signature

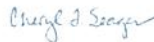
Thomas Abrey

Print Name

Director of HSE&S

Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY



Digitally signed by CHERYL
SEAGER
Date: 2023.04.12 12:37:43
-05'00'

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

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 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 foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. 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.

IT IS SO ORDERED.

**THOMAS
RUCKI**

Digitally signed by THOMAS RUCKI
DN: cn=U.S. Government, ou=Environmental
Protection Agency, c=THOMAS RUCKI,
o=3.2.842.1920330.100.1, +email=1003655804
Date: 2023.04.17 10:07:30 -0400

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Taylor.Nathan@epa.gov

Copy via Email to Respondent:

Tom.Abrey@Kuraray.com

Copy via Email to Regional Hearing Clerk:

Vaughn.lorena@epa.gov

LORI
JACKSON

Digitally signed by LORI JACKSON
DN: cn=US, o=U.S. Government,
ou=Environmental Protection Agency,
cn=LORI JACKSON,
0.9.2342.19200300.100.1.1=68001003655539
Date: 2023.04.17 15:24:59 -05'00'

Signed
Office of Regional Counsel
U.S. EPA, Region 6

ATTACHMENT A: Supplemental Environmental Project

Title	Community Emergency Response Improvements
SEP Category	Purchase of Emergency Response Resources
Timeline	Complete expenditures within six (6) months of date of CAFO filing.
Projected Cost	\$ 213,500
Description	Kuraray America, Inc. EVAL (“EVAL”) is partnering with several emergency response entities in the La Porte and Pasadena surrounding areas in fulfillment of this Supplemental Environmental Project (SEP). Each of the listed projects focuses on emergency planning and preparedness directed to assist the intended recipients to obtain better or additional communications systems, chemical emission detection equipment, HAZMAT equipment and/or provide training. The intended recipients and related equipment purchases are provided below.

La Porte Fire Department

The La Porte Fire Department is in La Porte, Texas and commits to providing fire prevention and protection, first responder programs in an effective manner through training, equipment, and protocols for the firefighters that respond. This Department consists of four fire stations, a fire training center and two burn buildings. EVAL will purchase and deliver to the Department the following:

1. Monitoring/Detection Equipment: Twelve (12) Poli 5 gas kits- these multi gas detectors offer 5 gas monitoring of toxic gases, oxygen, combustibles, carbon dioxide and volatile organic compounds (VOCs). Each kit comes with calibration gas and filters. Also included are tablets to capture data and updated software with meters. Presumptively, these kits would be kept in individual fire response trucks for usage when responding to a call or emergency. Each kit costs approximately \$2,541 and each tablet \$4,000. Training will be facilitated at the Department with trained staff.
2. Hazmat Response Equipment: Two (2) battery operated transfer pumps, two (2) overpack and metal drums, liners, personal protective equipment (PPE), non-sparking tools, plug kits, and absorbent pads with booms to contain any runoff. Training will be facilitated at the Department with trained staff.
3. Decontamination for Mass Casualty/Hazmat: One (1) technical decontamination system to be used to decontaminate responders wearing PPE with an emphasis on thorough agent removal or neutralization of hazardous materials. The system includes a shower kit, catch basin and scrubbing kits. Also, the system is equipped with hazardous-material extrication stretchers to assist in the movement of patients into the decontamination area. Furthermore, the provided equipment would support first response missions involving

other emergency response organizations. Training will be facilitated at the Department with trained staff.

4. **Equipment Portability:** One (1) 7x14 tandem axle trailer with a rear ramp and side door. This trailer will serve as the Department's hazardous material and decontamination mobile response command. The trailer is equipped with storage cabinets, an A/C unit and generator to support short and long-term response efforts.
5. **Hazmat Training Equipment:** One (1) pipe leak tree simulator to mimic pipes that could be found in buildings. One (1) MC-306/DOT-406 Dome Leak Simulator which has four stations to simulate leaking dome lids commonly found on gasoline cargo tanks and allows responders to practice drilling on removable aluminum plates of equivalent thickness of a cargo tank. One (1) Betts valve unloading fixture to grab the lugs on a cleanout cap to remove and release product. Claps and accompanying tools will be included. These items and equipment are designed to be used at the Department's fire training center for training purposes. Additionally, area industry will have use of the equipment to train to ensure readiness and to interoperate with other emergency response organizations.

Projected Cost: \$128,500

La Porte Emergency Medical Services

The City of La Porte Emergency Medical Services (EMS) is responsible for providing 24/7 emergency life support services at the basic and advanced level. The EMS utilizes five (5) stocked mobile intensive care unit ambulances with three of those vehicles inclusive of advanced life support equipment. The EMS provides services in the area EVAL is located along with other area industrial partners. EVAL will purchase and deliver to EMS the following:

1. **Mass Casualty Equipment and Supplies:** One (1) LUCAS chest compression system as an easy-to-use device that helps lifesaving teams deliver high-quality, guidelines-consistent chest compressions to sudden cardiac arrest patients or during a hazardous material response without first-responders being exposed to possible contaminated chemicals. The system includes a hard case, back plate, straps, and batteries. The system is approximately \$18,800. Also, four (4) mattresses for patients exposed to contaminated/hazardous chemicals. Each mattress is approximately \$1,139.00. These mattresses could be used to triage individuals in the event of a large-scale response effort and later be decontaminated for reuse.

Projected Cost: \$20,000

Pasadena Fire Department

The Pasadena Fire Department (Fire Department) is in Pasadena, Texas and is responsible for

providing 24/7 emergency medical services, Verdugo dispatch, arson investigations, and emergency operations center support. This Fire Department has eight stations across the city with eight engines, two trucks and five rescue ambulances. EVAL will purchase and deliver to the Fire Department the following:

1. **Monitoring/Detection Equipment:** Eight (8) Honeywell Multi-Gas Detector kits for first response trucks. These portable detectors feature advanced sensors for fast response and maintain a high-level of accuracy to measure O₂, LEL, H₂S, CO, and Cl₂. The kits come equipped with calibration gas, filters, and a wand all included in a carrying case. Each kit is approximately \$4395.00. EVAL will supply the Fire Department with a surplus of ancillary items (i.e., filters, wands, etc.) for continued future use. The surplus supply is approximately \$4860.00. The kits will provide enhanced air monitoring capabilities crucial of the inherent hazards of industrial facilities in the Pasadena area. Training will be facilitated at the Fire Department with trained staff.
2. **Hazmat Training Equipment:** One (1) pipe leak tree simulator to mimic pipes that could be found in buildings. One (1) MC-306/DOT-406 Dome Leak Simulator which has four stations to simulate leaking dome lids commonly found on gasoline cargo tanks and allows responders to practice drilling on removable aluminum plates of equivalent thickness of a cargo tank. One (1) Betts valve unloading fixture to grab the lugs on a cleanout cap to remove and release product. Claps and accompanying tools will be included. These items and equipment are designed to be used at the Department's fire training center for training purposes. Additionally, area industry will have use of the equipment to train to ensure readiness and to interoperate with other emergency response organizations.

Projected Cost: \$65,000