

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

FILED
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REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

LANXESS Corporation

RESPONDENT

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2022-0940

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is entered into by the United States Environmental Protection Agency, Region 6 ("EPA" or "Complainant") and Respondent, LANXESS Corporation ("Respondent") and concerns the facility located at 2226 Haynesville Hwy El Dorado, AR 71730 ("the Central Plant" or "Facility").
2. Notice of this action has been given to the State of Arkansas, under Resource Conservation and Recovery Act (RCRA) § 3008(a)(2), 42 U.S.C. § 6928(a)(2)¹.
3. For the purpose of this CAFO, where applicable, citations are made only to the Code of Federal Regulations ("C.F.R.") since the relevant Arkansas Administrative Code sections in the Arkansas Pollution Control Ecology Commission's Regulation No. 23 mirror 40 C.F.R. §§ 260, 261, 262, 270.

¹ On January 25, 1985, the State of Arkansas received final authorization for its base Hazardous Waste Management Program (50 FR 1513). Subsequent revisions have been made to the Arkansas Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this order are to the "EPA-Approved Arkansas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" dated October 2016, incorporated by reference under 40 C.F.R. § 272.201(c)(1)(i) effective on November 13, 2017. 82 Fed. Reg. 43189 (September 13, 2017); 40 C.F.R. 272.201: Arkansas State-Administered Program: Final Authorization. References and citations to the "EPA-Approved Arkansas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" may vary slightly from the State of Arkansas' published version. The corresponding C.F.R. citations are also provided.

4. For the purpose of this CAFO, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.
5. Respondent waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO and waives all defenses which have been raised or could have been raised to the claims in the CAFO.
6. The CAFO resolves only those violations which are alleged herein.
7. Respondent consents to the issuance of this CAFO as the most appropriate means of settling EPA's allegations without any adjudication of issues of law or fact, consents to the assessment and payment of the civil penalty in the amount and by the method set out in this CAFO, and consents to the compliance order in this CAFO.
8. 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 Consent Agreement and Final Order, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

To EPA:

Ashley S. McDonald
McDonald.Ashley@epa.gov

To Respondent:

Kyle Maxwell
kyle.maxwell@lanxess.com

With copy to:

Janet McQuaid
jmcquaid@babstcalland.com

II. JURISDICTION

9. This CAFO is issued by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 and is simultaneously commenced and concluded through the issuance of this CAFO under 40 Code of Federal Regulations ("C.F.R.") §§ 22.13(b) and 22.18(b)(2) and (3).
10. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of EPA to issue or enforce this CAFO and agrees not to contest the validity of this CAFO or its terms or conditions.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. Respondent is a corporation authorized to do business in the State of Arkansas.
12. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.
13. Respondent owns or operates the Facility.
14. The Facility is a chemical products manufacturer.
15. The Facility is assigned the EPA ID Number ARD043195429.
16. The Facility is a "facility" within the meaning of 40 C.F.R. § 260.10.
17. From February 22, 2021 through February 25, 2021, the EPA conducted an announced virtual off-site inspection of the Facility for compliance with RCRA, which included discussions of the facility's hazardous waste generation, management, and thermal treatment units; a review of the facility's records related to hazardous waste management; and a specific evaluation of the facility's compliance with the RCRA air pollution control requirements, as a generator of

hazardous waste in the State of Arkansas and a facility permitted to treat, store, and dispose of hazardous waste.

18. Respondent is a "generator" of "hazardous waste" as those terms are defined in 40 C.F.R. § 260.10.
19. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth in 40 C.F.R. Part 262.
20. As a generator who treats, stores, or disposes of hazardous waste, Respondent is subject to the regulations set forth in 40 C.F.R. Part 264.

Claim i. Failure to Meet the Requirements of Personnel Training

21. The allegations in Paragraphs 1-20 are realleged and incorporated herein by reference.
22. Pursuant to 40 C.F.R. § 264.16(d)(4), the owner or operator must maintain records documenting that the training or job experience required under 40 C.F.R. §§ 264.16(a), (b) and (c) have been given to, and completed by, facility personnel.
23. During the February 2021 inspection, the EPA inspectors requested additional records from Respondent to facilitate additional offsite compliance determinations in lieu of a protracted onsite records review. The EPA requested training records for personnel tasked with specific duties pertaining to RCRA compliance and emergency response.
24. Respondent provided additional information to the EPA on March 4, 2022.
25. After a review of this additional information, the EPA determined that Respondent failed to maintain training records for at least 12 employees.
26. The EPA finds that at the time of the February 2021 inspection and subsequent records review, Respondent failed to meet the requirements of personnel training, in violation of 40 C.F.R. § 264.16(d)(4).

IV. COMPLIANCE ORDER

27. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within one hundred and twenty (120) calendar days of the effective date of this CAFO, Respondent shall provide in writing the following:
- A. Respondent shall certify that it has assessed all its solid waste streams at the Facility to determine the accurate waste codes and has developed and implemented standard operating procedures (SOPs) to ensure that Respondent is operating the Facility in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (a) making hazardous waste determinations; (b) managing hazardous wastes; (c) reporting, transporting, and disposing of hazardous waste; (d) preparing its manifests; (e) meeting the requirements of the land disposal requirements; and (f) meeting the personnel training requirements of 40 C.F.R. § 264.16.
 - B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 notification for the Facility; and
 - C. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above.
28. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of the Respondent and shall include the following certification:
- "I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Copies of all documents required by this CAFO shall be sent to the following:

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECDSR)
ATTN: Erin Young-Dahl
Dallas, Texas 75270-2102

Where possible, notice shall be sent electronically by email to EPA Region 6's Enforcement Officer, Erin Young-Dahl at youngdahl.erin@epa.gov.

V. TERMS OF SETTLEMENT

A. Penalty Provisions

29. Pursuant to the authority granted in Section 3008(a) of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of **forty thousand nine hundred and seventy-one dollars and sixty cents (\$40,971.60)**.
30. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to the Treasurer United States.
31. The following are Respondent's options for transmitting the penalties: Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service Express Mail, the check should be remitted

to:

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

Overnight Mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Bank
Government Lockbox 979077

LANXESS Corporation
RCRA-06-2022-0940

U.S. EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
314-418-1028

Wire Transfer:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

The case name and docket number (In the Matter of LANXESS Corporation, Docket No. RCRA-06-2022-0940 shall be clearly documented on or within the chosen method of payment to ensure proper credit.

32. The Respondent shall send a simultaneous notice of such payment to the following:

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

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECAD-SR)
ATTN: Erin Young-Dahl
Dallas, Texas 75270-2102
young-dahl.erin@epa.gov

33. Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA. 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 cost of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid

within thirty (30) calendar days of the civil penalty's due date and 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).

34. Moreover, the costs of the Agency's administrative handling overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period 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. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Costs

35. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

C. Termination and Satisfaction

36. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall also certify this in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 28. Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

D. Effective Date of Settlement

37. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____

**James Marc
Rands**

Digitally signed by James Marc
Rands
Date: 2022.08.01 11:16:04 -04'00'

James Marc Rands, Vice President; Head of Production,
Technology, Safety, & Environment Americas
LANXESS Corporation

FOR THE COMPLAINANT:



Digitally signed by MARGARET
OSBOURNE
Date: 2022.08.03 20:09:09 -05'00'

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

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing CAFO 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 herein. 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. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

THOMAS RUCKI

Digitally signed by THOMAS RUCKI
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=THOMAS RUCKI,
0.9.2342.19200300.100.1.1=68001003655804
Date: 2022.08.08 13:02:58 -0400

Thomas Rucki
Regional Judicial Officer

LANXESS Corporation
RCRA-06-2022-0940

CERTIFICATE OF SERVICE

I certify that 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, Suite 500, 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:
mcdonald.ashley@epa.gov

Copy via Email to Respondent:
kyle.maxwell@lanxess.com

Copy via Email to:
jmcquaid@babstcalland.com

Copy via Email to the EPA, Region 6, Regional Hearing Clerk:
vaughn.lorena@epa.gov

LORI JACKSON

Digitally signed by LORI JACKSON
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=LORI JACKSON
0.9.2342.19200300.100.1.1+68001003655519
Date: 2022.08.08 16:18:41 -0500

Ms. Lori Jackson
Paralegal

Electronic service was agreed to by the parties in lieu of service by certified mail to the following:

LANXESS Corporation
Attn: Kyle Maxwell, Environmental Manager
2226 Haynesville Hwy, El Dorado, AR 71730