

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2023-0015
)	
Macdermid Enthone Americas LLC)	Proceeding to Assess a Civil Penalty Under
Maple Plain, Minnesota,)	Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Macdermid Enthone Americas LLC (Macdermid), a corporation doing business in Minnesota.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), the Administrator of the EPA (Administrator) promulgated the “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 Fed. Reg. 31668 (June 20, 1996), which is codified at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (CAPP). The Administrator promulgated the most recent amendment to the CAPP on December 19, 2019, 84 Fed. Reg. 69834.

10. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to 112(r) of the CAA, it shall be unlawful for any person to operate any statutory source in violation of such regulation or requirement.

11. Section 68.10(a) of the CAPP provides, in pertinent part, that the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under 40 C.F.R. § 68.115, shall comply with the requirements of the CAPP no later than the date on which a regulated substance is first present above a threshold quantity in a process.

12. Section 68.3 of the CAPP provides that “regulated substance” means any substance listed pursuant to Section 112(r)(3) of the CAA at 40 C.F.R. § 68.130.

13. Section 68.115(a) of the CAPP provides that “a threshold quantity of a regulated substance listed in 40 C.F.R. § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.”

14. Table 1 at Section 68.130(a) of the CAPP lists formaldehyde (solution) as a regulated toxic substance with a threshold quantity of 15,000 pounds (lbs).

15. Section 68.3 of the CAPP provides that “process” means “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 purposes of this definition, a single process includes “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.”

16. Section 68.3 of the CAPP 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.”

17. Section 68.10(g) of the CAPP sets forth the requirements a covered process must meet to be eligible for Program 1 requirements as provided by 40 C.F.R. § 68.12(b).

18. Section 68.12 of the CAPP requires the owner or operator of a stationary source subject to Part 68 to submit a single Risk Management Plan (RMP), as provided in §§ 68.150 to 68.185. The RMP shall include a registration that reflects all covered processes.

19. Beginning June 21, 2004, the CAPP, at 40 C.F.R. § 68.195(b), requires the owner or operator of a stationary source, for which an RMP was submitted, to correct the RMP within

one month of any change in the emergency contact information required under 40 C.F.R. § 68.160(b)(6).

20. Section 68.160(b)(6) of the CAPP requires the registration to include: The name, title, telephone number, 24-hour telephone number, and, as of June 21, 2004, the e-mail address (if an e-mail address exists) of the emergency contact.

21. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$55,808 per day of violation up to a total of \$446,456 for violations that occurred after November 2, 2015, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

22. Macdermid owns and operates a stationary source with a process eligible for Program 1 of the CAPP, specifically bulk storage of 36% formaldehyde solution (Facility's Process). The stationary source is located at 5630 Pioneer Creek Drive, Maple Plain, Minnesota.

23. On May 1, 2020, Macdermid submitted an RMP registration.

24. Macdermid's RMP registration states that the maximum inventory of formaldehyde (solution) is 30,100 pounds, which exceeds the threshold quantity of 15,000 pounds for formaldehyde (solution). *See* Table 1 to 40 C.F.R. § 68.130.

25. The Facility's Process is a "covered process," as that term is defined at 40 C.F.R. § 68.3 of the CAPP.

26. On November 21, 2022, U.S. EPA notified Macdermid of its intent to conduct an inspection of Macdermid's stationary source and requested RMP documents including the supporting documentation for Macdermid's Off-site Consequence Analysis.

27. On December 8, 2022, EPA conducted an announced inspection of Macdermid's stationary source.

28. Macdermid's RMP registration identifies Sandra Persyn as the emergency contact.

29. During the inspection, Macdermid's representatives stated that Sandra Persyn has been on medical leave since August 2022.

30. During the inspection, Macdermid's representatives acknowledged Macdermid had not updated its RMP to include: The name, title, telephone number, 24-hour telephone number, and e-mail address of the emergency contact.

31. On March 1, 2023, a Macdermid representative informed EPA's inspector that the company revised the RMP registration.

32. By failing to update its RMP within one month of any change in the emergency contact information required under 40 C.F.R. § 68.160(b)(6), Macdermid violated 40 C.F.R. § 68.195(b) of the CAPP.

Civil Penalty

33. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, cooperation, and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$10,761.

34. **Penalty Payment.** Respondent agrees to:

a. pay the civil penalty of \$10,761 within 30 days after the effective date of this CAFO.

b. Pay the civil penalty using any method provided in the table below.

Payment Method	Payment Instructions
Automated Clearinghouse (ACH) payments made through the US Treasury	<p>US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.</p>
Wire transfers made through Fedwire	<p>Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.</p>
<p>Payments made through Pay.gov</p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> • Go to Pay.gov and enter “SFO 1.1” in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. • Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field
<p>Cashier’s or certified check payable to “Treasurer, United States of America.”</p> <p>Please notate the CAFO docket number on the check</p>	<p>For standard delivery: U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, Missouri 63197-9000</p> <p>For signed receipt confirmation (FedEx, UPS, Certified Mail, etc): U.S. Environmental Protection Agency Government Lockbox 979077 U.S. EPA Fines and Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, Missouri 63101</p>

35. Within 24 hours of the payment of the civil penalty respondent must send a notice of payment and states Respondent's name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Carlene J. Dooley
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
dooley.carlene@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

36. This civil penalty is not deductible for federal tax purposes.

37. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

38. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

39. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: dooley.carlene@epa.gov (for Complainant), and Chuck.Braun@macdermid.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

40. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

41. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

42. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 40, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

43. Respondent certifies that it is complying fully with 40 C.F.R. § 68.195(b).

44. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

45. The terms of this CAFO bind Respondent, its successors and assigns.

46. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

47. Each party agrees to bear its own costs and attorney's fees in this action.

48. This CAFO constitutes the entire agreement between the parties.

Macdermid Enthone Americas LLC, Respondent

Charles Braun, Plant Manager

Date

Tax Identification Number

United States Environmental Protection Agency, Complainant

Michael D. Harris
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

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Docket No. CAA-05-2023-0015

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency Region 5