

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2015 OCT 13 10:57
OFFICE OF THE ATTORNEY GENERAL
STATE OF TEXAS

IN THE MATTER OF:	§	DOCKET NO. CAA 06-2015-3331
	§	
WESTLAKE VINYL COMPANY LP,	§	CONSENT AGREEMENT
	§	AND FINAL ORDER
Respondent	§	
	§	
GEISMAR, LOUISIANA	§	
	§	
	§	

CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 (“EPA”) (“Complainant”), and Westlake Vinyls Company LP located in Geismar, Louisiana (“Respondent” or “Westlake”), in the above referenced action, have agreed to resolve this matter, through issuance of this Consent Agreement and Final Order (“CAFO”).

I.
PRELIMINARY STATEMENT

1. This proceeding is 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) and is simultaneously commenced and concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), 22.18(b)(3), and 22.34.

2. This Complaint alleges that Respondent has violated the provisions governing Chemical Accident Prevention Provisions, 40 C.F.R. Part 68 and Section 112(r) of the Act, 42 U.S.C. § 7412(r), at its Geismar, Louisiana facility. Furthermore, this CAFO serves as notice

pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

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

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

6. Respondent consents to the issuance of this CAFO hereinafter recited, consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO.

7. 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 Complaint.

8. Nothing in this CAFO shall be construed to prevent or limit EPA's civil or 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.

9. Respondent hereby certifies that as of the date of execution of this CAFO, the Facility has corrected the violations alleged herein, and is now, to the best of its knowledge, in compliance with all the requirements of 40 C.F.R. Part 68 and Section 112(r) of the Act,

42 U.S.C. § 7412(r).

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, but not limited to, subsequent purchasers. Nothing in the previous sentence shall adversely affect any right of EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee, even if not owned in whole or in part, directly or indirectly, by Respondent.

II. STATUTORY AND REGULATORY BACKGROUND

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

13. 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. These regulations require owners and operators of stationary sources, as defined in 40 C.F.R. § 68.3, that have more than a threshold quantity of a regulated substance in a process 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, to develop, implement, and submit a Risk Management Plan ("RMP").

14. The regulations in 40 C.F.R. Part 68 set forth the requirements for the RMP that must be followed at each applicable stationary source.

15. "Owner or operator" shall mean any person who owns, leases, operates, controls, or supervises a stationary source.

16. "Stationary source" shall mean 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 pursuant to CAA § 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C).

17. "Threshold quantity" shall mean the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Act, as amended in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source, as specified in 40 C.F.R. § 68.115. 40 C.F.R. § 68.3.

18. "Regulated substance" shall mean any substance listed pursuant to Section 112(r)(3) of the Act, as amended in 40 C.F.R. § 68.130. 40 C.F.R. § 68.3.

19. "Process" shall mean 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. 40 C.F.R. § 68.3.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

20. Respondent is a limited partnership authorized to do business in the State of Louisiana.

21. Respondent is a "person" as that term is defined in Section 302(c) 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).

22. At all times relevant to this CAFO, Respondent owns and operates a chemical manufacturing facility located at 36045 Highway 30, Geismar, Louisiana 70734 ("Facility"). At the Facility the Respondent produces, processes, stores, and handles regulated substances above threshold quantities and other extremely hazardous substances.

23. Respondent is the owner and operator of a stationary source producing, handling, or storing regulated substances listed pursuant to CAA § 112(r)(3) or other extremely hazardous substances.

24. The Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, apply to owners and operators of stationary sources that have more than a threshold quantity in a process of a substance listed pursuant to CAA § 112(r)(3).

25. On March 25-28, 2013, EPA conducted an onsite CAA Partial Compliance Evaluation at the Facility to verify compliance with 40 C.F.R. Part 68.

26. RMP violations were discovered from a review of information obtained as part of the inspection.

27. On June 24, 2014, EPA requested information regarding a fire that occurred on June 4, 2014, at the Geismar facility.

28. The General Duty Clause (GDC) violation was discovered during a review of these documents.

IV. RMP VIOLATIONS

Count 1: Failure to inspect process equipment at frequency required by 40 C.F.R. § 68.73(d).

29. Respondent is subject to the RMP regulations enumerated in 40 C.F.R. Part 68.

including mechanical integrity requirements for process equipment in 40 C.F.R. §68.73.

30. The mechanical integrity requirements in 40 C.F.R. § 68.73(d) addresses inspection and testing requirements as follows: (1) inspections and tests shall be performed on process equipment; (2) inspection and testing procedures shall follow recognized and generally accepted good engineering practices; (3) the frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience; and (4) the owner or operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify that date of the inspection or test, the name of the person who performed the test, the serial number, or other unique identifier of the equipment on which the inspection or test was performed, a description of the inspection or test, and the results of the inspection or test.

31. The Respondent provided a list of process equipment subject to 40 C.F.R. 68.73(d) that were overdue for inspection at the time of the EPA's compliance evaluation.

32. The Respondent failed to perform inspections of process equipment subject to 40 C.F.R. §68.73(d) at a frequency consistent with applicable manufacturers' recommendations and good engineering practices, including API 510.

33. Through its failure to perform these inspections at the required frequency, Respondent has violated 40 C.F.R. §68.73(d).

Count 2: Failure to correct deficiencies in equipment that are outside of acceptable limits.

34. EPA realleges and hereby incorporates by reference Paragraphs 1-33 as referenced above.

35. The mechanical integrity requirements in 40 C.F.R. § 68.73(e) requires that the

owner or operator shall correct deficiencies in equipment that are outside acceptable limits (defined by process safety information in §68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

36. On March 22, 2012, a fire occurred at the Vinyl Chloride Monomer (VCM) Column in Area 2 of the VCM Plant.

37. Through a review of Respondent's documentation regarding the March 22, 2012, fire and release of vinyl chloride and chlorine above reportable quantity, the valve involved in this incident had been slowly leaking prior to the incident.

38. Through its failure to correct the equipment deficiencies listed in Paragraph 37, Respondent has violated 40 C.F.R. § 68.73(e).

Count 3: Failure to perform checks and inspections to assure that equipment is installed properly and consistent with design specifications and manufacturer's instructions.

39. EPA realleges and hereby incorporates by reference Paragraphs 1-38 as referenced above.

40. 40 C.F.R. § 68.73(f)(2) requires appropriate checks and inspections to be performed to assure that equipment is installed properly and consistent with design specifications and manufacturer's instructions.

41. Through a review of Respondent's documentation regarding the March 22, 2012, fire it was observed that the installation of interlock system could have prevented chlorine from entering the VCM column.

42. Through its failure to ensure that the VCM column design were upgraded to include the information listed in Paragraph 41, Respondent has violated 40 C.F.R. § 68.73(l)(2).

V.
GDC VIOLATIONS

43. Count 4: Failure to design and maintain a safe facility.

44. At the Facility, the Respondent produces, processes, handles, or stores regulated substances listed pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or other extremely hazardous substances.

45. Pursuant to section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), an owner/operator of a stationary source producing, processing, handling or storing substances listed pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or other extremely hazardous substance, has a general duty to: (1) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (2) design and maintain a safe facility, taking such steps as are necessary to prevent releases; and (3) minimize the consequences of accidental releases that do occur.

46. On June 4, 2014, a fire occurred at the Initiator Walk-In Freezer in or near the Polyvinyl Chloride (PVC) Plant.

47. The incident resulted from the decomposition of organic peroxides which caused the release of flammable vapors.

48. Through its failure to prevent flammable vapors from reaching an ignition source, Respondent has violated Section 112(r)(1) of the CAA.

VI.
CIVIL PENALTY AND TERMS OF SETTLEMENT

49. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), which authorizes EPA to assess a civil penalty of up to thirty-seven thousand five hundred

dollars (\$37,500) per day for each violation of the CAA.¹

50. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of 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, specific facts and equities, litigation risks, and other factors as justice may require, the parties have agreed that Respondent be assessed a civil penalty in the amount of \$99,100.

51. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay \$99,100 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 On Line 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:

¹ The Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701 provides for increases in the statutory penalty provisions (\$25,000) cited in the Clean Air Act Stationary Source Civil Penalty Policy dated October 25, 1991 (CAA Penalty Policy). It provides for up to \$25,000 per day of violation for violations occurring on or before January 30, 1997; up to \$27,500 per day for each violation occurring after January 30, 1997 through March 15, 2004; up to \$32,500 per day for each violation occurring after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring after January 12, 2009.

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SI-MO-C2-GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

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 On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in search field
Open form and complete required fields.

PLEASE
NOTE:

The docket number CAA 06-2015-3331 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:

Dominique Duplechain
Enforcement Officer (6EN-AS)
Air Surveillance Section
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue Suite 1200
Dallas, Texas 75202-2733;

Lorena Vaughn
Region 6 Hearing Clerk (6RC-D)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

52. 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.

53. 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).

54. 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 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.

55. 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 (10) percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

56. 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.

57. This document is a "Final Order" as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of "prior violations."

RETENTION OF ENFORCEMENT RIGHTS

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

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

VIII.
COSTS

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

IT IS SO AGREED:

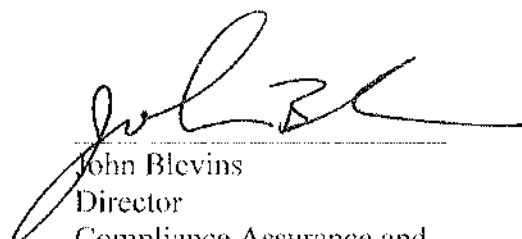
FOR THE RESPONDENT:

Date: 4-16-15


Westlake Vinyls Company LP

FOR THE COMPLAINANT:


Date: 5-7-15


John Blevins
Director
Compliance Assurance and
Enforcement Division

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, 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 5/13/15


Regional Judicial Officer
U.S. EPA, Region 6
Thomas Ruck

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May, 2015, the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7014 0150 0000 2454 9802

CT Corporation System
Registered Agent for the Respondent
5615 Corporate Blvd
Suite 400B
Baton Rouge, LA 70808


Paralegal
U.S. EPA Region 6, Dallas, Texas