

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2016 DEC -8 AM 10:59
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:)
)
)
GATX CORPORATION)
HEARNE, TEXAS TANK CAR FACILITY) DOCKET NO. CAA 06-2017-3308
)
)
RESPONDENT)
_____)

CONSENT AGREEMENT AND FINAL ORDER

1. The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (“EPA”), Region 6 (“Complainant”) and GATX Corporation (“Respondent” or “GATX”), in the above referenced action, have agreed to simultaneously commence and resolve this matter, through issuance of this Consent Agreement and Final Order (“CAFO”). This proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act, as amended (CAA or the Act), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), 22.18(b)(3), and 22.34.

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

3. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations contained herein; however, the Respondent neither admits nor denies the specific factual allegations or conclusions of law contained in this CAFO or the subject matter hereof.

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

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, based upon this CAFO, for violations not alleged in this CAFO.

8. Full payment of the penalty proposed in this CAFO 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. Full payment of the penalty proposed in this CAFO shall only resolve respondent's liability for federal civil penalties for the violations and facts alleged herein.

9. 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.

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

I. EPA'S STATUTORY AND REGULATORY BACKGROUND

11. Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), provides that the objective of

the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of regulated substances or other extremely hazardous substances and to minimize the consequences of any such release that does occur.

12. Pursuant to CAA § 112(r)(7), 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate regulations dictating release prevention, detection, and correction requirements for various regulated facilities depending on the threat the facilities pose to surrounding communities.

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.

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

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

16. 40 C.F.R. Part 68 provides general requirements applicable to owners or operators of a stationary source subject to Part 68. It also establishes requirements that apply to an owner or operator based on whether the stationary source operates processes subject to one of three “Programs” -- Program 1, Program 2, and Program 3.

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

18. Pursuant to 40 C.F.R. § 68.69(a) an owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information.

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

20. As adjusted by the Civil Penalty Inflation Adjustment Rule of July 1, 2016 (81 FR 43091) December 11, 2008, (73 Fed. Reg. 75340, 75346), 40 CFR § 19.4, the Administrator may assess a civil penalty of up to \$44,539 per day for each violation occurring after January 12, 2009.

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

22. “Person” is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), as including an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

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

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

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

26. "Stationary source" is defined in Section 112(r)(2)(C) of the Act and 40 C.F.R. § 68.3 as any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

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

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

II. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

29. Complainant alleges and asserts as follows:

30. Respondent, GATX Corporation, is a New York corporation authorized to do business in the State of Texas.

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

32. At all times relevant to this CAFO, Respondent owned and operated a railcar service facility located at 1401 West Brown Street in Hearne, Texas (“Facility”).

33. On December 8-10, 2015, EPA conducted an onsite CAA 40 C.F.R. Part 68 and Section 112(r) compliance evaluation of the facility.

34. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), authorizes EPA to bring an administrative action when penalties that exceed \$356,312¹ or when the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

III. ALLEGED VIOLATIONS

Alleged Violation 1

35. Complainant hereby restates and incorporated by reference Paragraphs 1 through 35 above and alleges as follows:

36. 40 C.F.R. § 68.36(b) requires that if changes in processes, quantities stored or handled, or any other aspect of the stationary source might reasonably be expected to increase or decrease the distance to the endpoint by a factor of two or more, the owner or operator must

¹ The maximum penalty that can be assessed (without a waiver) under Section 113 of the Clean Air Act was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$220,000 for violations occurring between January 30, 1997 and March 15, 2004, to \$270,000 for violations occurring between March 15, 2004 and January 12, 2009, to \$295,000 for violations occurring between January 12, 2009 and December 6, 2013, to \$320,000 for violations occurring after December 6, 2013; and to \$356,312 for violation occurring after November 2, 2015.

complete a revised analysis within six months of the change and submit a revised risk management plan as provided in § 68.190.

37. GATX, at the time of the inspection, failed to complete a revised analysis within in six months of no longer using anhydrous ammonia and submit a revised risk management plan.

38. Because Respondent failed to complete a revised analysis within six months of no longer using anhydrous ammonia and submit a revised risk management plan, EPA alleges that Respondent violated 40 C.F.R. § 68.36(b).

Alleged Violation 2

39. Complainant hereby restates and incorporates by reference Paragraphs 1 through 39 above and alleges as follows:

40. 40 C.F.R. § 68.71(c) requires the owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by this paragraph, and prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

41. GATX, at the time of the inspection, failed to provide a record used to verify that its employee's understood the training regarding a covered process.

42. Because Respondent failed to provide a record used to verify that its employee's understood the training regarding a covered process, EPA alleges that Respondent violated 40 C.F.R. § 68.71(c).

Alleged Violation 3

43. Complainant hereby restates and incorporates by reference Paragraphs 1 through 43 above and alleges as follows:

44. 40 C.F.R. § 68.79(d) requires the owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

45. GATX, at the time of the inspection, failed to provide a copy of its compliance audit conducted on June 1, 2012.

46. Because the Respondent failed to provide a copy of its compliance audit conducted on June 1, 2012, EPA alleges that Respondent violated 40 C.F.R. § 68.79(d).

Alleged Violation 4

47. Complainant hereby restates and incorporates by reference Paragraphs 1 through 47 above.

48. 40 C.F.R. § 68.95(a)(3) requires the owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment which shall include training for all employees in relevant procedures.

49. GATX, at the time of the inspection, failed to demonstrate training for all employees in relevant procedures regarding its emergency response program.

50. Because the Respondent failed to demonstrate training for all employees in relevant procedures regarding its emergency response program, EPA alleges that Respondent violated 40 C.F.R. § 68.95(a)(3).

Alleged Violation 5

51. Complainant hereby restates and incorporates by reference Paragraphs 1 through 51 above.

52. 40 C.F.R. § 68.195(b) requires that emergency contact information, beginning in June 21, 2004, within one month of any change in the emergency contact information required under § 68.160(b)(6), the owner or operator shall submit a correction of that information.

53. GATX, at the time of the inspection, failed to change within one month the name, title, telephone number, and email address of the new emergency contact.

54. Because Respondent did not change within one month the name, title, telephone number, and email address of the new emergency contact, EPA alleges that Respondent violated 40 C.F.R. § 68.195(b).

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

55. For the reasons set forth above, Respondent has agreed to pay a civil penalty of Forty Four Thousand and Eight Hundred Dollars (\$44,800.00) to resolve this matter 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 twenty-five thousand dollars (\$25,000) per day for each violation of the CAA.²

56. Upon consideration of the entire record herein, including the Respondent's having taken measures to prevent a recurrence of the above described incidents, 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, the economic benefit of noncompliance, the seriousness of the violation, specific facts and equities, litigation risks, and other factors as justice may require, EPA finds that **Forty Four Thousand and Eight Hundred Dollars (\$44,800.00)** is an appropriate penalty to resolve this matter.

² 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; and up to \$44,539 per day for each such violation occurring after November 2, 2015

57. Within forty-five (45) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier's 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:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-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: Docket Number CAA-06-2017-3308 shall be clearly typed on the check or other method of payment to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Tony Robledo
Enforcement Officer
Chemical Accident Enforcement Section (6EN-AS)
U.S. EPA, Region 6, Suite 1200
1445 Ross Avenue
Dallas, TX 75202

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

The Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

58. The 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.

59. If the Respondent fails to submit payment within forty-five (45) days of the effective date of this Order, the Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

60. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA may 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. If assessed, interest on the civil penalty assessed in this CAFO will begin to accrue forty-five (45) 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 may be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

61. Pursuant to Section 113(d)(5) of the CAA, 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 may be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorneys' 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 in the event EPA prevails in pursuing any such claims.

62. 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, for any claims which may arise in the future, from developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required.

NOTIFICATION

63. Unless otherwise specified elsewhere in this CAFO, 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 party that another individual has been designated to receive the communication:

Complainant:

Tony Robledo
Enforcement Officer
Chemical Accident Enforcement Section (6EN-AS)
U.S. EPA, Region 6, Suite 1200
1445 Ross Avenue
Dallas, TX 75202

Respondent:

Ricardo Salias
Manager, EH&S
GATX Corporation

Hearne TX Tank Car Facility
1401 West Brown Street
Hearne, TX 77859

COMPLIANCE

64. The Respondent hereby certifies that as of the date of the execution of this CAFO, that it has corrected the violations alleged herein, and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

MODIFICATION

65. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and the Respondent, and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

EFFECTIVE DATE

66. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk together with notice to GATX of same.

IV. RETENTION OF ENFORCEMENT RIGHTS

67. Except for claims and causes of action set forth in this CAFO, EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal or State laws, regulations, statutes, or permitting programs.

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

69. Except for claims and causes of action set forth in this CAFO, nothing in this CAFO shall limit the power and authority of EPA or the United

States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, or regulated or other extremely hazardous substances at, on, or from the Respondent's facility. Furthermore, except for claims and causes of action set forth in this CAFO, nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, or criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws, regulations, or subparts thereof.

VI. COSTS

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

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

FOR THE RESPONDENT:

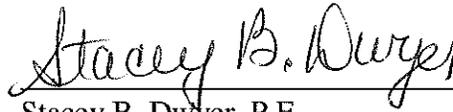
Date: 11/30/16



GATX Corporation
By: *Jeffrey Neer*
Its: *VP EHS*

FOR THE COMPLAINANT:

Date: 12/07/2016

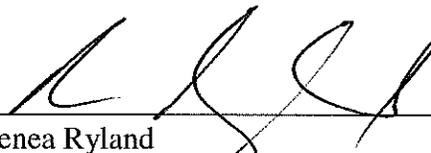


Stacey B. Dwyer, P.E.
Acting Director
Compliance Assurance and
Enforcement Division
U.S. EPA Region 6

FINAL ORDER

Pursuant to the Section 113 of the CAA, 42 U.S.C. § 7413, 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 or EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those claims and causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondent's (or their 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. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 12-8-16



Renea Ryland
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of December 2016, 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, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by certified mail, return receipt requested 7014 0150 0000 2454 5217:

Ricardo Salias
Manager, EH&S
GATX Corporation
Hearne TX Tank Car Facility
1401 West Brown Street
Hearne, TX 77859



Paralegal

U.S. EPA Region 6, Dallas, Texas