

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

FILED
2015 JUN 10 10 28 AM '15
OFFICE OF THE REGIONAL ADMINISTRATOR
ENVIRONMENTAL PROTECTION AGENCY
REGION 6 OFFICE
DALLAS, TEXAS

IN THE MATTER OF:

SHINTECH LOUISIANA, LLC
ADDIS, LOUISIANA

RESPONDENT

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CONSENT AGREEMENT AND FINAL ORDER
USEPA Docket No. CERCLA-06-2016-2901

CONSENT AGREEMENT AND FINAL ORDER

I.
PRELIMINARY STATEMENT

1. The United States Environmental Protection Agency, Region 6 (“EPA”) and Shintech Louisiana, LLC (“Shintech”) have agreed to a settlement of this action before filing a complaint.
2. Shintech is a Delaware Limited Liability Company authorized to do business in the State of Louisiana. Shintech owns and operates a facility at 26270 LA Hwy-405, Plaquemine, Louisiana 70764 that is a vertically integrated chlor-alkali, vinyl chloride monomer, polyvinyl chloride facility.
3. This Consent Agreement and Final Order (“CAFO”) is entered into by the United States Environmental Protection Agency (“EPA” or “Complainant”), Region 6 and Shintech Louisiana, LLC (“Respondent” or “Shintech”) and concerns the facility located at 27260 LA Hwy-405, Plaquemine, Louisiana 70764 (the “Facility”).
4. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein;

however, the 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. The Respondent explicitly waives any right to contest the allegations, to request a hearing on any issue of law or fact set forth herein, and its right to appeal the proposed final order contained in this CAFO. Further, Respondent waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.
6. The CAFO resolves only those violations which are alleged herein.
7. The Respondent consents to the issuance of the 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 and consents to the specific stated compliance order.

II. JURISDICTION

8. This CAFO is issued by the EPA, Region 6 pursuant to Section 109 (b) of the CERCLA 42 U.S.C. § 9609(b), and is simultaneously commenced and concluded through the issuance of this CAFO under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
9. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by the EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of the Regional Administrator of EPA, Region 6 to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms or conditions.

III.
PARTIES BOUND

10. This CAFO shall apply to and be binding upon EPA, and on Respondent and Respondent's officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all persons, including but not limited to, contractors and consultants, acting on behalf of Respondent, as well as upon subsequent purchasers of the Facility. Any change in the ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this CAFO.
11. Respondent shall provide a copy of this CAFO to any subsequent owners or successors before a controlling interest in ownership rights, stock, assets or the Facility is transferred. Respondent shall be responsible for and liable for completing all of the activities required pursuant to this CAFO, regardless of whether there has been a transfer of ownership or control of the Facility or whether said activities are to be performed by employees, agents, contractors, subcontractors, laboratories, or consultants of Respondent.
12. Respondent shall condition all contracts or agreements with contractors, subcontractors, laboratories and/or consultants in connection with this CAFO, on compliance with the terms of this CAFO. Respondent shall ensure that its contractors, subcontractors, laboratories, and consultants comply with this CAFO.
13. Not later than 60 days prior to any voluntary transfer by Respondent of any interest in the Facility or the operation of the Facility, Respondent shall notify EPA, Region 6 of the proposed transfer. In the case of a voluntary transfer through a bankruptcy, Respondent shall notify EPA, Region 6 within 24 hours of the decision to transfer property. Respondent shall notify EPA of any involuntary transfers immediately upon Respondent's initial receipt of notice of any involuntary

transfer. Not later than three (3) days after any transfer, Respondent shall submit copies of the transfer documents to EPA, Region 6.

IV.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. Pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), a person that is in charge of a vessel or facility, as soon as he has knowledge of any release of a hazardous substance from such vessel or facility in quantities equal to or greater than the reportable quantity (“RQ”), to immediately notify the National Response Center established under the Clean Water Act [33 U.S.C.A. § 1251 et seq.] of such release.
15. Respondent is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
16. At all relevant times hereto, Respondent’s Facility was and continues to be a “facility” as defined Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
17. At all relevant times hereto, Respondent was and continues to be an “owner” or “operator” of the Facility as defined under Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).
18. At all times relevant hereto, Respondent has discharged, and continues to discharge, “hazardous substances” as defined at Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) as is determined by Section 102 of CERCLA, 42 U.S.C. § 9602, and 40 Code of Federal Regulations (“C.F.R”) § 302.
19. On or about April 23, 2015, Respondent voluntarily provided to EPA, Region 6 information that lead EPA, Region 6 to conduct further investigation about the activities at Respondent’s Facility.
20. EPA’s investigation resulted in findings of fact and conclusions of law that Respondent failed

to comply with its notification requirements set forth at Section 103 of CERCLA, 42 U.S.C. § 9603.

21. Specifically, EPA investigation determined that Respondent noncompliance occurred during the periods of March 2013 through January 2015.

Claims. Failure to Comply with Its Notification Requirements

22. The allegations in Paragraphs 1- through 21 are realleged and incorporated herein by reference.

23. On the dates and times specified below, Respondent had knowledge of the releases of vinyl chloride monomer (“VCM”) that Respondent did not report to the National Response Center (“NRC”):

- a. March 21, 2013 at 19:37 hours (CT);
- b. May 14, 2013 at 19:53 hours (CT);
- c. January 21, 2014 at 19:30 hours (CT);
- d. December 24, 2014 at 21:15 hours (CT); and
- e. January 8, 2015 at 7:15 hours (CT).

24. On January 8, 2015, at 7:15 hours (CT), Respondent had knowledge of the releases of ethylene dichloride (“EDC”) and ethylene that Respondent did not report to the NRC.

25. VCM, EDC, and ethylene is each a “hazardous substance” as defined at Section 101(14) of CERCLA, U.S.C. § 9601(4).

26. For the dates identified in Paragraphs 23 and 24 above, the RQ for VCM was 1 pound and the RQ for EDC and ethylene was 100 pounds as is set forth in 40 C.F.R. § 302.

27. For each of the releases during the seven periods identified in Paragraphs 23 and 24 above,

Respondent reported details of the releases to the Iberville Local Emergency Planning Commission ("LEPC"), as required by Section 304 of EPCRA, 42 U.S.C. § 116, to the Louisiana State Police, as required by Louisiana State Law, and to the State of Louisiana Department of Environmental Quality.

28. For each of the five periods identified in Paragraphs 23 above, Respondent had a release of VCM at or above the RQ, Respondent had knowledge of the release at or close to the time of each release, and Respondent did not report the releases to the NRC.
29. For the single period identified in Paragraph 24 above, Respondent also had a release of EDC and ethylene at or above the RQ, Respondent had knowledge of the release at or close to the time of release, and Respondent did not report the releases to the NRC.
30. Therefore, for all the dates and times listed in Paragraphs 23 and 24 above, Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and is subject to administrative civil penalties.

V. COMPLIANCE

31. By its signature to this CAFO, Respondent is certifying in accordance, with the certification language set forth below that Respondent has taken the necessary steps to ensure that it is in compliance with all applicable requirements of Section 103 of CERCLA, U.S.C. § 9603 with respect to the Facility identified in Paragraph 3 above of this CAFO.

"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."

VI.
TERMS OF SETTLEMENT

i. Penalty Provisions

32. Pursuant to the authority granted in Section 109 of CERCLA, 42 U.S.C. § 9609; which has been delegated to the Regional Administrator, and further delegated to the Superfund Division Director, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusion 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, which includes Respondents information provided to EPA on or about April 15, 2015, and Respondent prompt responses to EPA, Region 6, following the discussion of April 2015 and subsequent meeting of July 7, 2015, it is ordered that Respondent be assessed a civil penalty of One Hundred and Sixty-Three Thousand Four Hundred and Two Dollars (\$163,402.00).

33. The penalty shall be paid within thirty (30) day of the effective date of this CAFO.

34. 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 made payable to the United States Treasury and should be remitted to:

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

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

U.S. Bank
Government Lockbox 979077
US EPA Fines and Penalties
1005 Convention Plaza

SL-MO-C2-GL
St. Louis, MO 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 Shintech Louisiana, LLC Docket No.

CERCLA-06-2016-2901 shall be clearly documented on or within your method of payment to ensure proper credit.

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

Lorena S. Vaughn
Regional hearing Clerk (6RC-D)
U.S.EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Misty Ward, Enforcement Officer
Prevention and Response Branch (6SF-PC)
U.S.EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Your adherence to this request will ensure proper credit is given when penalties are received in EPA, Region 6.

36. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 1311, 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 process 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). 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 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. 40 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

ii. General Provisions

Stipulated Penalties

37. In addition to any other remedies or sanctions available to EPA, if the Respondent fails or refuses to comply with any provision of this CAFO, the Respondent shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 500.00
16th through 30th day	\$ 1,000.00
31st day and beyond	\$ 5,000.00

38. Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.
39. The payment of stipulated penalties shall be made in accordance with the options set forth in Subsection i. (Penalty Provisions) of this Section VI of the CAFO.
40. The Respondent shall send simultaneous notices of such payments to the following:
- Lorena S. Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
- Misty Ward, Enforcement Officer
Prevention and Response Branch (6SF-PC)
U.S.EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
41. Adherence to these procedures in addition to Respondent's compliance with the provisions of Section VI., concerning interest, penalties, and administrative costs, will ensure proper credit when payments are received.
42. In addition to the stipulated penalties set forth above, EPA specifically reserves the right to seek other remedies or sanctions available to the EPA or the United States by reason of the Respondent's failure to comply with the requirements of this CAFO.

Modification

43. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

Retention of Enforcement Rights

44. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.
45. Except as specifically provided in this CAFO, nothing herein 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, hazardous substances on, at or from Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and 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 or regulations.

Indemnification

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

Record Preservation

47. The Respondent shall preserve, during the pendency of this CAFO, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors which, in any way relate to this CAFO regardless of any document retention policy to the contrary.

Cost

48. 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.

Termination and Satisfaction

49. This CAFO shall be terminated at such time as Respondent, by its showing, demonstrate that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order, the paying of the civil penalties, and the paying of any stipulated penalties required by this CAFO, and requests in writing that the EPA terminate the CAFO. Unless the EPA, Region 6 objects in writing with specific reasons within sixty (60) days of this request, this CAFO is terminated on the basis of Respondent's request. Upon termination, Respondent shall have no further obligations pursuant to this CAFO. If, however, the EPA, Region 6 so objects to Respondent's request, then the matter shall then be subject to the Dispute Resolution procedure of this CAFO. In such case, the Respondent shall bear the burden of proving that this CAFO should be terminated.

Effective Date of Settlement

50. This CAFO, and any subsequent modifications, 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: 10/14/2015



David Wise
Vice President of Manufacturing
Shintech Louisiana, LLC

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER (con't):**

FOR THE COMPLAINANT:

Date: 10/30/15

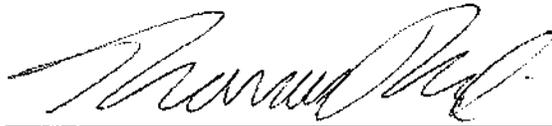


Carl Edlund
Director
The Superfund Division

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR 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. The 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 CFR § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 11-10-2015



Regional Judicial Officer

Thomas Ruck

CERTIFICATE OF SERVICE

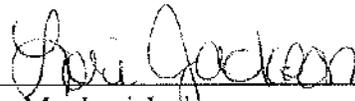
I hereby certify that on the 10th day of November, 2015, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method identified below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7001 0360 000366745000

Copies to:

Respondent:
David Wise
Vice President of Manufacturing
Shintech Louisiana, LLC
5618 Highway 332 East
Freeport, TX 77541

With Copy to:
Mr. W. David Tidholm
Attorney for Shintech and Partner at
Porter Hedges LLP
1000 Main St., Suite 3600
Houston, TX 77002


Ms. Lori Jackson
Paralegal