



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAR 09 2017

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ms. Margaret Hill  
Partner and Chair, Energy, Environment  
and Mass Torts Practice Group  
Blank Rome LLP  
One Logan Square  
Philadelphia, Pennsylvania 19103

Re: PMC Organometallix, Inc.  
Consent Agreement and Final Order  
CAA-04-2017-8007(b)

Dear Ms. Hill:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Clean Air Act (CAA) matter (Docket No. CAA-04-2017-8007(b)) involving PMC Organometallix, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of its potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the U. S. Environmental Protection Agency. If you have any questions with regard to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Ms. Michi Kono, Region 4 Associate Attorney at (404) 562-9558.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony G. Toney".

for Anthony G. Toney  
Chief

Chemical Safety and Enforcement Branch

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
BEFORE THE ADMINISTRATOR**

**IN THE MATTER OF:** )  
 )  
PMC Organometallix, Inc. )  
 )  
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Respondent. )  
\_\_\_\_\_ )

**Docket No.**  
CAA-04-2017-8007(b)

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HEARINGS CLERK

**CONSENT AGREEMENT AND FINAL ORDER**

**A. PRELIMINARY STATEMENT**

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing 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 United States Environmental Protection Agency, Region 4 (the "EPA"). The Director of the Air, Pesticides and Toxics Management Division, EPA Region 4, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
3. Respondent is PMC Organometallix, Inc., a company doing business in the State of Alabama. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or "Agreement") and the attached final order ("Final Order" or "Order") without adjudication of any issue of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

**B. JURISDICTION**

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this Consent Agreement are pursuant to Section 113(a)(3)(A).
6. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

PMC Organometallix, Inc.  
CAA-04-2017-8007(b)

7. On July 26, 2016, the EPA issued to Respondent a Notice of Potential Violation (“NOPV”), providing notice that the EPA found that Respondent potentially committed the alleged violations described in Section E of this Agreement and providing Respondent an opportunity to confer with the EPA. On August 17, 2016, and September 7, 2016, representatives of Respondent and the EPA discussed the July 26, 2016, NOPV.

8. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b).

9. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

### **C. GOVERNING LAW**

10. Section 112(r) of the Act, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3). The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.

11. Pursuant to Sections 112(r)(3) and 112(r)(7) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 C.F.R. Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the “Risk Management Program” (RMProgram) and apply to an owner or operator of a stationary source that has a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.

12. Pursuant to Section 112(r)(7)(B)(iii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 C.F.R. §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a “process” as defined in 40 C.F.R. § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.

### **D. FACTUAL ALLEGATIONS**

13. Respondent operates a “stationary source” as that term is defined by Section 302(z) of the Act, 42 U.S.C. § 7602(z). The Respondent’s stationary source is located at 13755-B Highway 43 North, Axis, Alabama 36505 (stationary source).

14. Respondent has submitted and registered an RMPlan to the EPA for its stationary source and has developed an RMProgram accidental release prevention program for the stationary source.

15. For the purpose of this Agreement:

- a) At its stationary source, the Respondent operates a chemical manufacturing plant.
- b) At its stationary source, the Respondent has more than 2,500 pounds of chlorine in a process.
- c) At its stationary source, the Respondent has one RMP level 3 covered chemical manufacturing process, which stores or otherwise uses chlorine in an amount exceeding its applicable threshold of 2,500 pounds.
- d) On November 10, 2015, the EPA conducted an onsite inspection of the RMP related records and equipment for the purpose of assessing the Respondent's compliance with the RMP requirements and the implemented recognized and generally accepted good engineering practices (RAGAGEP) for its covered processes at its stationary source.
- e) The Respondent was unable to provide documentation of lines of authority defined through an organization chart or similar document, after such documentation was requested during the inspection.
- f) At the time of the inspection, comparison of the design temperature for reaction vessel V-101 and the listed maximum design temperature and pressure for V-101 posted on piping and instrument diagram (P&ID) No. MB-81-X-026-01-D-10 indicated the P&ID information was incorrect. According to the vessel design information, the maximum temperature should be 300°F, not 800°F posted on the P&ID.
- g) In 2009 and 2014, a corrosion evaluation of the structural steel in the Area 100 unit was conducted by Orion Engineering to determine if the braced framed structure can support both the live and dead loads created by the tin chloride processing equipment. The 2014 study concluded that 10 percent of the structural steel members supporting the tin chloride processing equipment were corroded by chlorine to an extent that they may not be able to support the anticipated live loads in their current condition. An additional 17 percent of the structural steel supporting the tin chloride processing equipment received a grade of "poor" and there are areas of heavy corrosion throughout. The study stated the structural steel rated poor is likely adequate to support the existing dead load and anticipated live loads. According to the Respondent's production manager, none of the recommendations contained in Orion Engineering's 2014 report for the Area 100 unit had been started at the time of EPA's inspection.

**E. ALLEGED VIOLATIONS OF LAW**

16. Based on EPA's compliance monitoring investigation, the EPA alleges that the Respondent violated the codified rules governing the Act's Chemical Accident Prevention Provisions, because Respondent did not adequately implement provisions of 40 C.F.R. Part 68 when it:

Failed to document the names or positions of people and define the lines of authority through an organization chart or similar document, when responsibility for implementing individual requirements of the RMP is assigned to persons other than the persons identified under paragraph (b) of the section as required by 40 C.F.R. § 68.15(c);

Failed to include piping and instrument diagrams pertaining to the equipment in the process in its process safety information as required by 40 C.F.R. § 68.65(d)(1)(ii); and Failed to correct deficiencies in equipment that are outside acceptable limits (defined by the 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 as required by 40 C.F.R. § 68.73(e).

#### F. TERMS OF CONSENT AGREEMENT

17. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
- (b) neither admits nor denies the factual allegations stated above;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to the conditions specified in this Agreement;
- (f) consents to any Permit Action;
- (g) waives any rights to contest the alleged violations of law set forth in Section E of this Consent Agreement; and
- (h) waives its rights to appeal the Order accompanying this Agreement.

18. For the purpose of this Agreement:

- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1);
- (d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the Southern District of Alabama;
- (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action; and
- (f) certifies that as of its execution of this Agreement, it is in compliance with all relevant requirements of 40 C.F.R. Part 68.

19. Penalty Payment. Respondent agrees to:

- (a) pay the civil penalty of **FORTY EIGHT THOUSAND NINE HUNDRED FORTY TWO DOLLARS (\$48,942)** ("EPA Penalty") within 30 calendar days of the Effective Date of this Agreement;
- (b) pay the EPA Penalty by forwarding a cashier's or certified check payable to the

“Treasurer, United States of America,” or by electronic transfer to one of the following addresses:

For payment sent via electronic transfer

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Beneficiary: “U.S. Environmental Protection Agency”;

For payment sent via standard delivery

U.S. Environmental Protection Agency  
Cincinnati Finance Center Box 979077  
St. Louis, MO 63197-9000; or

For payment sent for signed receipt confirmation (FedEx, DSL, UPS, USPS Certified)

U.S. Environmental Protection Agency  
Cincinnati Finance Center Box 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
(Delivery Location Phone Number: 314-425-1819).

The check shall reference on its face the name and the Docket Number of the CAFO. Within 24 hours of payment of the EPA Penalty, send a separate copy of the check or confirmation of electronic transfer, and a written statement that payment has been made in accordance with this Agreement, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Jordan Noles  
Chemical Management and Emergency  
Planning Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

20. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- (a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- (d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

21. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

22. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

23. By signing this Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations.

24. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

25. Except as qualified by Paragraph 20, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

#### **G. EFFECT OF CONSENT AGREEMENT AND ATTCHED FINAL ORDER**

26. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

27. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
28. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
29. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon written agreement of both parties, and approval of the Regional Judicial Officer.
30. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and pursuant to 40 C.F.R. Part 19, as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.
31. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
32. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
33. The EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

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## H. EFFECTIVE DATE

34. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk. The foregoing Consent Agreement in the Matter of PMC Organometallix, Inc., Docket No. CAA-04-2017-8007(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

PMC Organometallix, Inc.

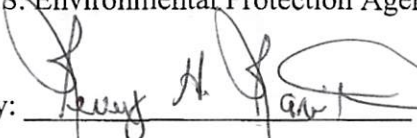
By:  Date: 16 JAN 2017

Name: MATTHEW STERSHIC (Typed or Printed)

Title: GLOBAL GENERAL MANAGER (Typed or Printed)

FOR COMPLAINANT:

U.S. Environmental Protection Agency

By:  Date: 2/23/17

Beverly H. Banister

Director

Air, Pesticides and Toxics Management Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
)  
PMC Organometallix, Inc. )  
)  
)  
Respondent. )  
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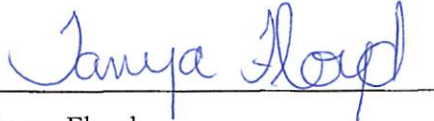
Docket No.  
CAA-04-2017-8007(b)

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective on the date that the Consent Agreement and Final Order are filed by the Regional Hearing Clerk.

SO ORDERED this 7<sup>th</sup> day of March, 2017.



Tanya Floyd  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the matter of PMC Organometallix, Inc., CAA-04-2017-8007(b), on the parties listed below in the manner indicated:

Robert W. Bookman  
U. S. EPA, Region 4  
Air, Pesticides and Toxics  
Management Division  
61 Forsyth Street  
Atlanta, GA 30303

(Via EPA's internal mail)

Michi Kono  
U. S. EPA, Region 4  
Office of Regional Counsel  
61 Forsyth Street  
Atlanta, GA 30303

(Via EPA's internal mail)

Ms. Margaret Hill  
Partner and Chair, Energy, Environment  
and Mass Torts Practice Group  
Blank Rome LLP  
One Logan Square  
Philadelphia, Pennsylvania 19103

(Via Certified Mail -  
Return Receipt Requested)

Date:

3/9/17



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental  
Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511