

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 12/21/23
REGION 1 – NEW ENGLAND

_____))
In the Matter of:))
))
Roberts Chemical Company, Inc.))
))
330-B Victor Road))
Attleboro, Massachusetts 02703))
))
Respondent.))
))
Proceeding under Section 113 of the))
Clean Air Act))
_____)

Received by
EPA Region 1
Hearing Clerk

Docket Number:
CAA-01-2024-0025

CONSENT AGREEMENT AND FINAL ORDER

1. The United States Environmental Protection Agency, Region 1 (“EPA” or “Complainant”) and Roberts Chemical Company, Inc. (“Respondent” or “Roberts”) consent to the entry of this Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”). This CAFO resolves Respondent’s liability for alleged violations of Section 112(r)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7412(r)(1).

2. EPA and Respondent hereby agree to settle this matter through this CAFO without the filing of an administrative complaint, as authorized under 40 C.F.R. §§ 22.13(b) and 22.18(b).

3. EPA and Respondent agree that settlement of this matter is in the public interest, and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

4. Therefore, before taking any testimony, upon the pleadings, without adjudication or admission of any issue of fact or law, it is hereby ordered as follows:

I. PRELIMINARY STATEMENT

5. This Consent Agreement and Final Order is entered into under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice, 40 C.F.R. Part 22.

6. EPA and the U.S. Department of Justice jointly determined that this CAA matter is appropriate for administrative penalty assessment. 42 U.S.C. § 7413(d)(1).

7. The Regional Judicial Officer is authorized to ratify this CAFO, which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b).

8. This CAFO both initiates and resolves an administrative action for the assessment of monetary penalties, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d). As more thoroughly discussed below, the CAFO resolves alleged CAA violations that Complainant asserted occurred in conjunction with Respondent's storage, handling and processing of extremely hazardous substances at its facility in Attleboro, Massachusetts (the "Facility"). Respondent neither admits nor denies the specific factual allegations and the violations alleged in this CAFO.

II. STATUTORY AND REGULATORY AUTHORITY

9. The purpose of Section 112(r) of the CAA and its implementing regulations is "to prevent the accidental release and to minimize the consequences of any such release" of an "extremely hazardous substance." 42 U.S.C. § 7412(r)(1).

General Duty Clause

10. Section 112(r)(1) of the Act is referred to as the “General Duty Clause” or the “GDC.” Pursuant to the GDC, owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to: (a) identify hazards that may result from accidental releases of such substances using appropriate hazard assessment techniques, (b) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (c) minimize the consequences of accidental releases that do occur.

11. The term “have a general duty in the same manner and to the same extent as section 654 of title 29” of the United States Code means owners and operators must comply with the General Duty Clause in the same manner and to the same extent as employers must comply with the Occupational Safety and Health Act administered by the Occupational Safety and Health Administration.

12. The term “extremely hazardous substance” means an extremely hazardous substance within the meaning of Section 112(r)(1) of the CAA, including any substance that alone or in combination with other substances or factors may cause death, serious injury, or substantial property damages as a result of short-term exposures associated with releases to the air. *See* 40 C.F.R. § 1604.2, 84 Fed. Reg. 67899, 67905 (Dec. 12, 2019), 85 Fed. Reg. 10074, 10083 (Feb. 21, 2020); and Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Sen. Report No. 101-228, at 211, *reprinted in* 1990 U.S.C.C.A.N. 3385, 3596 (1989). The term includes, but is not limited to, regulated substances listed in CAA Section 112(r)(3) and in 40 C.F.R. § 68.130. In addition, the release of any substance that

causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or that causes substantial property damage by blast, fire, corrosion or other reaction would create a presumption that such substance is extremely hazardous.¹ Under Section 112(r)(3) of the CAA, the term “extremely hazardous substances” also includes, without limitation and in addition to substances listed in 40 C.F.R. § 68.130, those substances listed in 40 C.F.R. Part 355, Appendices A and B, published under Section 302 of EPCRA, 42 U.S.C. § 11002.

13. The term “accidental release” is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

14. The term “stationary source” is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), in pertinent part, as any buildings, structures, equipment, installations, or substance-emitting stationary activities, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur.

15. EPA routinely consults chemical Safety Data Sheets (“SDSs”), codes, standards, and guidance issued by chemical manufacturers, trade associations, and fire prevention associations (collectively, “industry standards”) to understand the hazards posed by using various extremely hazardous substances. The industry standards also are evidence of the standard of care that industry, itself, has found to be appropriate for managing those hazards. These industry standards are consistently relied upon by industry safety and fire prevention experts and are sometimes incorporated into state building, fire, and mechanical codes.

¹ Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Sen. Report No. 101-228, at 211, *reprinted in* 1990 U.S.C.C.A.N. 3385, 3596 (1989).

16. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), provide for the assessment of civil penalties for violations of Section 112(r) of the CAA. Statutory maximum penalties for the CAA, as adjusted for inflation, are set forth in 40 C.F.R. Part 19.

III. GENERAL FACTUAL ALLEGATIONS

17. Respondent is a corporation organized under the laws of the state of Rhode Island with a place of business at 330-B Victor Road, Attleboro, Massachusetts.

18. The Facility is supplied with raw chemical feedstocks by tanker truck or railcar. Chemical unloading operations occur on the eastern portion of the Facility at dedicated tank truck and railcar unloading stations. Several chemicals are stored in bulk at the Facility in dedicated aboveground storage tanks (ASTs), including, nitric acid (one tank), hydrogen peroxide (four tanks), sodium hypochlorite (two tanks), and sulfuric acid (three storage tanks). The nitric acid, hydrogen peroxide, and sodium hypochlorite ASTs are located within dedicated concrete secondary containment areas located beyond the Facility's eastern building wall. The sulfuric acid tanks are located inside the building in the chemical transfer room. Finished products are primarily packaged into drums and totes for off-site shipments to customers.

19. Some of the extremely hazardous substances processed, handled, or stored at the Facility are described below.

- a. Sulfuric acid (93% and 50% concentrations) and nitric acid are listed as extremely hazardous substances under EPCRA Section 302 and 40 C.F.R. Part 355, Appendices A and B.
- b. Aqueous ammonia (29% concentration) is a CAA 112(r) regulated substance listed in 40 C.F.R. § 68.130.

- c. Cyanides are extremely hazardous substances within the meaning of the GDC because they are fast-acting poisons that can be lethal when breathed in, among other possible routes of exposure.
 - d. The incompatible chemical combinations described in paragraph 29 below also are “extremely hazardous substances,” as that term encompasses any substance that alone or *in combination with other substances or factors* may cause death, serious injury, or substantial property damages as a result of short-term exposures associated with releases to the air. See 40 C.F.R. § 1604.2, 84 Fed. Reg. 67899, 67905 (Dec. 12, 2019), 85 Fed. Reg. 10074, 10083 (Feb. 21, 2020).
20. Respondent operates the Facility, as that term is defined by 40 C.F.R. § 372.3.
21. The Facility is a “stationary source” as that term is defined Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).
22. As a corporation, Respondent is a “person” within the meaning of Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).
23. On November 21, 2019, EPA and its contractors conducted an inspection (the “Inspection”) at the Facility. The principal purpose of the Inspection was to determine whether Respondent was operating the Facility in compliance with federal environmental laws and regulations administered by EPA, including but not limited to Sections 302 – 312 of EPCRA, 42 U.S.C. §§ 11002 – 11022, and Section 112(r) of the Clean Air Act.
24. During the Inspection and based on information submitted by Respondent after the Inspection, several areas of concern were noted for the Facility. EPA issued an inspection report on January 17, 2020 (revised in May 2020), documenting observations and areas of concern identified under the CAA Section § 112(r) that form the basis of the alleged violations described

below. Also, in 2021 a sulfuric acid spill occurred during offloading of a railcar at the Facility due to a ruptured hose, resulting in further information gathering by EPA in 2022.

25. The unanticipated release of any extremely hazardous substance described in Paragraph 19 into the ambient air from the Facility, either alone or as a result of a reaction with a co-located incompatible material, would constitute an “accidental release,” as that term is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

IV. ALLEGED VIOLATIONS

Count 1: Failure to Design and Maintain a Safe Facility to Prevent Releases

26. Complainant realleges and incorporates by reference Paragraphs 1 through 25.

27. Pursuant to the General Duty Clause in Section 112(r)(1) of the CAA, owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances have a general duty, to the same extent as 29 U.S.C. § 654, to design and maintain a safe facility to prevent releases.

28. The recommended standard of care for designing and maintaining a safe facility is to base design considerations upon applicable design codes, federal and state regulations, and recognized industry practices, to prevent releases or minimize their impacts, and to develop and implement standard operating procedures, preventative maintenance programs, personnel training programs, management of change practices, incident investigation procedures, and self-auditing procedures. The National Fire Protection Association (NFPA), American Society of Mechanical Engineers (ASME), and the American National Standards Institute (ANSI) have published standards and guidance for this purpose. See also U.S. EPA, *Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1)* (May 2000) (“EPA’s General Duty Clause Guidance”).

29. The instances when Complainant alleges Respondent failed in its general duty to design and maintain the Facility as a safe facility, taking such steps as are necessary to prevent a release of an extremely hazardous substance are summarized below.

- a. Incompatible chemicals were stored adjacent to one another. Potassium hydroxide adjacent to sulfuric and phosphoric acid in Storage Room 1 and nitric acid adjacent to/within storage areas for other acids in Storage Room 3. Industry standards of care require separation of incompatible chemicals. For example, NFPA 400 (2016) Section 6.1.12.1 requires separation of incompatible materials when stored in quantities greater than five pounds, and Section 6.1.12.2 provides examples of separation methods such as by a distance of at least 20 ft. or isolating materials using a non-combustible partition.
- b. NFPA diamonds are not present on chemical storage room entrances, facility entrance doors, or bulk storage equipment throughout the Facility – all areas where extremely hazardous substances are present. Standards by the NFPA require signs indicating health, flammability, and ignitibility should be on the entrance to each room or area with hazardous materials to assist fire department response and access. See, NFPA 704 (2017), Section 4.3(2).
- c. Multiple distressed or damaged chemical storage drums were present within Storage Room 2 of the Facility. Sulfuric, nitric, and hydrochloric acid are stored in Storage Room 2, among other chemicals. Industry standards require that equipment associated with hazardous materials should be maintained in operable condition and defective containers should be removed from use and repaired or

disposed of in an approved manner. See, NFPA 400 (2016), Sections 6.1.16.1 and 6.1.16.3.

- d. Unstable storage of bulk chemical totes containing acids in Storage Room 1 of the Facility. NFPA 400 (2016), Section 6.1.13.2, requires hazardous material storage shelving should be designed to carry the designated loads and to be braced and anchored appropriately.
- e. Inadequate pipe labeling was present on sulfuric acid and caustic piping leading to the Chemical Transfer Room. Industry standards regarding hazardous material piping include: ANSI/ASME A13.1 (2015), a system for identification of contents of piping systems and NFPA 400 (2016), Section 6.1.6.2, indicating piping and tubing associated with hazardous materials should be labelled in accordance with ASME A13.1.
- f. The Facility's hose program was inconsistently applied throughout the Facility. For example, several hoses present in the hydrogen peroxide AST farm were not equipped with hose tags to indicate adequate certification. See, Hose Safety Institute Handbook, NAHAD (2015) Section 11.2, which provides details on markings for hose assemblies.

30. Complainant alleges that by failing to design and maintain a safe facility to prevent accidental releases of an extremely hazardous substance processed, handled, or stored as part of its operations, Respondent violated the General Duty Clause at Section 112(r)(1) of the Clean Air Act.

Count 2: Failure to minimize the consequences of accidental releases which do occur

31. Complainant realleges and incorporates by reference Paragraphs 1 through 30.

32. Pursuant to the General Duty Clause in Section 112(r)(1) of the CAA, owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances have a general duty, to the same extent as 29 U.S.C. § 654, to minimize the consequences of accidental releases that do occur.

33. The recommended standard of care to minimize the consequences of accidental releases includes emergency planning and preparedness measures, as well as design and maintenance measures to minimize the severity and duration of releases that do occur. The National Fire Protection Association, American Society of Mechanical Engineers, and the American National Standards Institute have published standards and guidance for this purpose. See also U.S. EPA, *Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1)* (May 2000) (“EPA’s General Duty Clause Guidance”).

34. The instances when Complainant alleges that Respondent failed in its general duty to minimize the consequences of an accidental release of an extremely hazardous substance are summarized below.

- a. Labeling for normal operations and emergency shutdown buttons on the bulk railcar loading/unloading area electrical panel was faded and illegible. The NFPA 400 (2016), Section 6.1.6.2(4), requires that emergency shutoff valves should be identified and the location clearly visible, accessible, and indicated by sign.

35. Complainant alleges that by failing to minimize the consequences of accidental releases of an extremely hazardous substance processed, handled, or stored as part of its operations, Respondent violated the General Duty Clause at Section 112(r)(1) of the Clean Air Act.

V. TERMS OF SETTLEMENT

36. The provisions of this CAFO shall apply to and be binding on EPA, and on Respondent and its officers, directors, agents, successors, and assigns.

37. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and that this CAFO states a claim, upon which relief may be granted, against Respondent. Respondent hereby waives any defenses it might have as to jurisdiction and venue relating to the violations alleged in this CAFO.

38. Respondent neither admits nor denies the specific factual allegations contained in Section III of this CAFO or the violations alleged in Section IV of this CAFO. Respondent consents to the assessment of the penalty stated herein.

39. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO and waives its right to appeal the Final Order.

40. Respondent certifies that it has corrected the alleged violations cited in this CAFO and will operate the facility in compliance with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

41. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and taking into account the relevant statutory penalty criteria, the facts alleged in this CAFO, and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty of \$74,914 for the violations alleged in this matter.

42. Respondent agrees to the issuance of this CAFO and to the payment of the civil penalty cited in Paragraph 41.

43. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the total penalty amount of \$74,914 using any method or combination of methods, provided on the

website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>.

Respondent shall include the case name and docket numbers (“*In re Roberts Chemical Company, Inc.*, CAA-01-2024-0025”) on the face of each check or wire transfer confirmation. In addition, at the time of payment Respondent shall simultaneously send notice of proof of payment² to the following contacts:

Sarah Meeks
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code 04-3
Boston, MA 02109-3912
meeks.sarah@epa.gov

and

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code 4-6
Boston, MA 02109-3912
santiago.wanda@epa.gov

and

R1_Hearing_Clerk_Filings@epa.gov

44. In the event that any portion of the civil penalty amount described in Paragraph 43 is not paid by the required due date, the total penalty amount of \$74,914, plus all accrued interest shall become due immediately to the United States upon such failure. Then interest, as calculated in Paragraph 45, shall continue to accrue on any unpaid amounts until the total amount due has been received by the United States. Respondent shall be liable for such amount regardless of whether EPA has notified Respondent of its failure to pay the penalty amount by the due date or

² Proof of payment means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with “*In re Roberts Chemical Company, Inc.*, CAA-01-2024-0025”.

made a demand for payment. All payments to the United States under this paragraph shall be made by company, bank, cashiers, or certified check, or by electronic funds transfer, as described in Paragraph 43.

45. **Collection of Unpaid CAA Penalty:** In the event that any portion of the civil penalty amount for the alleged CAA violations is not paid when due without demand, pursuant to Section 113(d)(5) of the CAA, Respondent will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid when due. In that event, interest will accrue from the due date at the “underpayment rate” established pursuant to 26 U.S.C § 6621(a)(2). In the event that a penalty is not paid when due, an additional charge will be assessed to cover the United States’ enforcement expenses, including attorney’s fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent’s outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

46. The civil penalty under this CAFO and any interest, nonpayment penalties, and other charges described herein shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 C.F.R § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

47. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA for the violations alleged herein. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO.

48. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

49. This CAFO shall not relieve 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.

50. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.

VI. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

51. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above.

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

53. By signing this CAFO, 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 the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.

54. By signing this CAFO, 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.

55. Except as qualified by Paragraph 45 (collection of unpaid penalties), each party shall bear its own costs and fees in this proceeding including attorney's fees. Respondent specifically waives any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

56. Complainant and Respondent, by entering into this Consent Agreement, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the fully executed CAFO, by e-mail to: Jennifer Cervenka, Esq., jcervenka@cgdesq.com. Respondent understands that this e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database. Complainant has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing order, dated June 19, 2020. Electronic signatures shall comply with, and be maintained in accordance with, that Order.

VII. EFFECTIVE DATE

57. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will electronically transmit a copy of the filed CAFO to the Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

FOR RESPONDENT:


Signature

12/11/23
Date

Printed Name: Robert R McIntyre

Title: CEO

Address: 330-B Victor Road Attleboro MA 02703

FOR COMPLAINANT:

Signature

Date

Carol Tucker, Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 1 – New England

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND**

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FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of EPA’s Consolidated Rules of Practice and Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Consent Agreement is incorporated by reference into this Final Order and is hereby ratified. Respondent, Roberts Chemical Company, Inc., is ordered to pay the civil penalty of \$74,914 in the manner indicated. The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

SO ORDERED THIS ____ DAY OF _____ 2023.

LeAnn Jensen, Regional Judicial Officer
U.S. EPA, Region 1