

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
BEFORE THE ADMINISTRATOR

FILED  
2009 OCT -1 AM 10: 50  
REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF:

FLINT HILLS RESOURCES, LP.

NUECES COUNTY, TEXAS

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EPA DOCKET NO. CAA-06-2009-3313

COMPLAINT AND  
CONSENT AGREEMENT AND  
FINAL ORDER

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The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Flint Hills Resources, LP, Nueces County Texas, (Respondent) in the above referenced proceeding, hereby agree to resolve this matter through the issuance of this Complaint and Consent Agreement and Final Order (Complaint and CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding is for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act, as amended (the Act and CAA), 42 U.S.C. § 7413(d) and for additional terms of settlement as agreed by Respondent. This proceeding was instituted by the issuance of a Complaint and Notice of Opportunity for Hearing (Complaint) incorporated herein, and is simultaneously concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.34.

2. The Complaint alleges Flint Hills Resources, LP, violated regulations promulgated pursuant to the Act at its Nueces Bay Refinery facility located in Nueces County, Texas (the Facility).

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

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

5. By signature on this Complaint and CAFO, Respondent waives any right to an appeal of this proceeding.

6. This CAFO settles and resolves Respondent's liability for federal civil penalties for the violations and facts alleged in this Complaint.

7. 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.

8. Respondent hereby certifies that as of the date of its execution of this CAFO, the Facility has corrected the violations alleged in the Complaint.

9. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to 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.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. The Respondent is a limited partnership doing business in the State of Texas and 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).

12. At all relevant times, Respondent owned and operated a refinery and petrochemical manufacturing facility located in Nueces County, Texas.

13. Pursuant to Section 112(r)(1) of the Act, 42 U.S.C. §7412(r)(1), it is the objective of the regulations and programs authorized under this subsection to prevent the accidental release of any substance listed pursuant to §112(r)(3) or any other extremely hazardous substance.

Additionally, the owners and operators of stationary sources producing, processing, handling or storing such listed or extremely hazardous substances have a general duty to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

14. Respondent is the owner and operator of a stationary source producing, processing, handling or storing extremely hazardous substances.

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

16. "Accidental release" is defined in Section 112(r)(2)(A) as "an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source."

17. On May 19, 2009, an accidental release of an extremely hazardous substance (resulting in a fire) occurred at the Facility at approximately 10:50 a.m. Respondent notified the Texas Commission on Environmental Quality of the accidental release and resulting fire on the same date.

18. The fire was the result of a tanker truck refilling 1,500 gallons of corrosion inhibitor into a 1,000 gallon bulk tank located one deck above a heat exchanger. During the fill operation, the bulk tank overflowed and spilled the extremely hazardous substance onto a three unit heat exchanger which is believed to have ignited the extremely hazardous substance. A contract worker received non-life threatening first and second degree burns, and was treated and released from a local hospital. As a result of the fire, an automated telephone system was initiated, but the fire was extinguished and the notification system cancelled prior to residents being contacted.

19. The Respondent's facility's Emergency Response Team and the Refinery Terminal Fire Company (RTFC) responded and the fire was extinguished approximately seventeen (17) minutes after igniting. The Respondent promptly initiated an investigation into the cause of the fire.

#### Count 1

20. The May 19, 2009, release was preventable. Respondent did not exercise its general duty to ensure a safe facility by offloading a tanker truck containing 1,500 gallons of corrosion inhibitor (an extremely hazardous substance) into a 1,000 gallon bulk tank which contained approximately 214 gallons of corrosion inhibitor (an extremely hazardous substance).

The facility's past Process Hazard<sup>1</sup> Analyses (PHA) did not include a review of the hazards associated with this chemical bulk tank in terms of facility siting or overflow potential. The PHA focus was on the process impacts of having too little or too much chemical injection rates. Also, the facility does not have a unit specific procedure for offloading corrosion inhibitor chemical into this bulk tank. The Incident Summary Report also revealed the facility's safe work permit did not contain complete information and lacked an MSDS review of the chemical being offloaded. The corrosion inhibitor has a Flash point of 120 degrees (F) and the heat exchanger operates at about 600 degrees (F).

21. Respondent failed to comply with Section 112(r)(1) of the Act, 42 U.S.C. §7412(r)(1), by failing to maintain a safe facility and taking such steps as are necessary to prevent releases and minimize the consequences of accidental releases of extremely hazardous substances.

### III. CIVIL PENALTY AND TERMS OF SETTLEMENT

22. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), which authorizes EPA to assess a civil penalty of up to twenty-five thousand dollars (\$25,000)<sup>1</sup> per day for each violation of the Act. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply,

<sup>1</sup> The Civil Penalty Inflation Adjustment Rule of December 31, 1996 (61 Fed. Reg. 69360) provides for ten percent (10%) 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). The ten percent (10%) increase is effective for violations which occurred between January 30, 1997 and March 14, 2004 for a statutory maximum penalty of \$27,500. The Civil Penalty Inflation Adjustment Rule of February 13, 2004 (69 Fed. Reg. 7121) provides for a further increase in the statutory penalty provisions in the CAA Penalty Policy by 17.23% for violations occurring on or after March 15, 2004, for a statutory maximum penalty of \$32,500. The Civil Penalty Inflation Adjustment Rule of December 11, 2008 (73 Fed. Reg. 75340) provides for a further increase in the statutory penalty provisions in the CAA Penalty Policy for violations occurring on or after January 12, 2009, for a statutory maximum penalty of \$37,500.

the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, it is Ordered that Respondent be assessed a civil penalty in the amount of thirty seven thousand five hundred dollars (\$37,500.00).

23. Within thirty (30) days of Respondent's receipt of this fully executed CAFO, Respondent shall pay thirty seven thousand five hundred dollars (\$37,500.00) by cashier's or certified check 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; or wire transfer; Automated Clearinghouse for receiving U.S. 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. Fed Ex), the check 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):

Automated Clearinghouse (ACH) for receiving U.S. currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact – Jesse White (301) 887-6548  
ABA=051036706  
Transaction Code 22 – checking  
Environmental Protection Agency  
Account 31006  
CTX Format

For On Line Payment:

[WWW.PAY.GOV](http://WWW.PAY.GOV)  
Enter sfo 1.1 in search field  
Open form and complete required fields.

PLEASE NOTE: Docket number CAA-06-2009-3313 shall be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and transmittal letter to the following:

Guadalupe Pesina (6EN-AT)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

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

24. 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.

25. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

26. EPA will also assess a fifteen dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue



from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

27. Pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including, but not limited to, 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. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

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

#### IV. RETENTION OF ENFORCEMENT RIGHTS

29. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of any other Federal laws, regulations, statutes, or permitting programs not the subject of this action.

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


#### V. COSTS

31. Each party shall bear its own costs and attorneys fees.

IT IS SO AGREED:

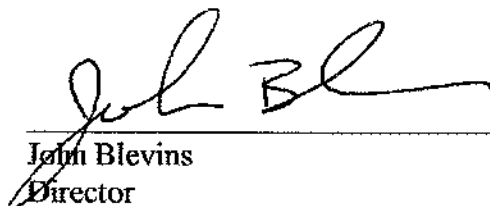
FOR THE RESPONDENT:

Date: 9-18-09

  
\_\_\_\_\_  
Richard Harris  
Vice President and Manufacturing Manager  
Flint Hills Resources, LP

FOR THE COMPLAINANT:


Date: 9.23.09

  
\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

FINAL ORDER

Pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated October 1, 2009

  
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Michael Barra  
Regional Judicial Officer  
U.S. EPA, Region 6

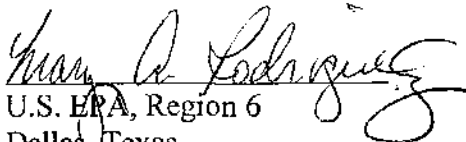
CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October, 2009, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order ("Complaint and CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7008 0150 0003 0411 7041

Jane E. Schilmoeller  
Associate General Counsel  
Environmental & Operations  
Flint Hills Resources, LP  
4111 East 37<sup>th</sup> Street North  
Wichita, Kansas 67220

Richard Harris  
Vice President and Manufacturing Manager  
Flint Hills Resources, LP  
4111 East 37<sup>th</sup> Street North  
Wichita, Kansas 67220

  
U.S. EPA, Region 6  
Dallas, Texas