

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR



In the Matter of:)
)
BASF Corporation,)
)
Respondent.)
Docket No. CWA-05-2018-0008

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. On July 24, 2018, the United States Environmental Protection Agency (USEPA or Complainant) filed against Respondent a civil administrative complaint (Complaint) pursuant to Section 309(g) of the Clean Water Act, ("the Act"), 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits at 40 C.F.R. Part 22.

2. On September 24, 2018, Respondent filed its Answer which either admitted or denied the factual allegations of the Complaint.

3. The parties agree to resolve the allegations of the Complaint without the adjudication or admission (except as to admissions in Respondent's Answer) of any issue of fact or law and that it is in their interest and the public interest.

4. The parties agree to the terms of this Consent Agreement and Final Order (CAFO) including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

5. Respondent admits the jurisdictional allegations of the Complaint.

6. Respondent 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 CAFO including, but not limited to, its right to request a hearing under 40 C.F.R. § 22.15(c) and Sections 309(g)(2)(B) and (4)(C) of the Act, 33 U.S.C. § 1319(g)(2)(B) and (4)(C); its right to appellate review under Section 309(g)(8)(B) of the Act, 33 U.S.C. § 1319(g)(8)(B); its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and its right to appeal this CAFO.

Statutory and Regulatory Background

7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

8. Section 402 of the Act, 33 U.S.C. § 1342, provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to navigable waters. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit, and a violation of a NPDES permit is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

9. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the State of Ohio requested approval from EPA to administer its own permit program for discharges into navigable waters within Ohio, and such approval was granted by EPA on March 11, 1974, 39 Fed. Reg. 26,061 (July 16, 1974). Therefore, the Ohio Environmental Protection Agency issues NPDES permits.

10. Section 502(5) of the Act defines a “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).

11. Section 502(12) of the Act defines the “discharge of a pollutant,” as, *inter alia*, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

12. Section 502(6) of the Act defines “pollutant,” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

13. Section 502(14) of the Act defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

14. Section 502(7) of the Act defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

15. The regulation at 40 C.F.R. § 122.2 defines the term “waters of the United States,” as, *inter alia*, “[A]ll waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide[.],” and “[A]ll other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters.”

16. Section 309(g) of the Act, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State in which the violation occurs, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1311, which includes discharges not in compliance with a permit under Section 402 of the Act, 33 U.S.C. § 1342.

Civil Penalty

17. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty of up to \$16,000 per day of violation up to a total of \$177,500, for violations of Section 301 of the Act that occurred after January 12, 2009 through December 6, 2013, or up to \$16,000 per day of violation up to a total of \$187,500, for violations of Section 301 of the Act that occurred after December 6, 2013 through November 2, 2015.

18. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent and gravity of the violation(s) alleged, as well as Respondent's ability to pay, prior history of such alleged violation(s), degree of culpability, economic benefit or savings (if any) resulting from the alleged violations, and such other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$112,500.00.

19. For checks sent by regular U.S. Postal Service Mail, Respondent must send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis MO 63197-9000

For checks sent by Express Mail, Respondent must send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis MO 63101

The check must note Respondent's name and the docket number of this CAFO. For an Electronic Funds Transfer, Respondent's electronic funds transfer must be payable to "Treasurer, United States of America," and sent to:

The Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045

In the comment or description field of the electronic funds transfer, Respondent must state its name and the docket number of this CAFO. For Automated Clearinghouse (ACH) also known as REX or remittance express, Respondent's ACH electronic funds transfer must be payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-Checking

In the comment area of the electronic funds transfer, Respondent must state its name and the docket number of this CAFO. For on-line payment, Respondent must go to www.pay.gov and use the Search Public Forms option on the tool bar, enter SFO 1.1 in the search field, open the form, and complete the required fields. Respondent's on-line payment must include a transmittal letter stating Respondent's name, complete address, and the case docket number of this CAFO. Respondent must write the case docket number on the face of its payment method, and send copies of its transmittal letter to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604-3590

Todd Brown (WC-15J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Jeffery M. Trevino (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

20. Within 30 days after the effective date of this CAFO, Respondent must pay the \$112,500.00 civil penalty.

21. This civil penalty is not deductible for federal tax purposes.

22. If Respondent does not timely pay the civil penalty, Complainant may request the United States Department of Justice bring a civil action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement

expenses for the collection action. Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

23. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2). 31 U.S.C. § 3717. In addition to the assessed penalty and interest, Respondent must pay the United States' attorneys fees and costs for collection proceedings, and Respondent must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. See 33 U.S.C. § 1319(g)(9).

General Provisions

24. The parties consent to service of this CAFO by electronic mail at the following valid email addresses: trevino.jeffery@epa.gov (for Complainant); and, djcamerson@bressler.com (for Respondent).

25. Full payment of the settlement civil shall not in any case affect the right of the Complainant or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).

26. Full payment of the penalty shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in the Complaint. 40 C.F.R. § 22.18(c).

27. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, or local laws and permits.

28. Respondent certifies that it is complying with Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342.

29. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and the EPA's Interim Clean Water Act Settlement Penalty Policy (Mar. 1995).

30. The terms of this CAFO bind Respondent and its successors and assigns.

31. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

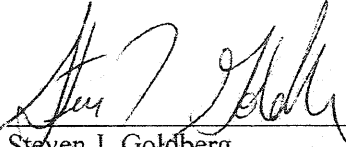
32. Each party agrees to bear its own costs and attorney's fees in this action.

33. This CAFO constitutes the entire agreement between the parties.

34. The effective date for this CAFO is the date it is filed with the Regional Hearing Clerk, which is after completion of the notice and comment requirements of Sections 309(g)(4)(C) and 309(g)(5) of the Act, 33 U.S.C. §§ 1319(g)(4)(C), (5), and 40 C.F.R. §§ 22.38, 22.45, and which shall be at least 30 days after the CAFO has been signed by the Regional Judicial Officer or Regional Administrator.

In the Matter of: BASF Corporation, Cleveland, Ohio.
Docket No. CWA-05-2018-0008.

BASF Corporation, Respondent



Steven J. Goldberg
Vice President & Deputy General Counsel,
Regulatory & Government Affairs
BASF Corporation

Oct 9, 2019

Date

United States Environmental Protection Agency, Complainant



fr Michael D. Harris
Acting Director
Enforcement and Compliance Assurance Division
Region 5
U.S. Environmental Protection Agency

10/16/19

Date

**In the Matter of:
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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

By: _____ Date: _____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: BASF Corporation, Cleveland, Ohio
Docket Number: CWA-05-2018-0008

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CWA-05-2018-0008, which was filed on _____, in the following manner to the following addressees:

Copy by E-mail to Attorney for Complainant: Jeffery M. Trevino
trevino.jeffery@epa.gov

Copy by E-mail to Attorney for Respondent: Donald J. Camerson, II, Esq.
djcamerson@bressler.com

Copy by intra-office mail to Administrative Law Judge: Honorable Christine Donelian Coughlin
Administrative Law Judge
U.S. Environmental Protection Agency
Ariel Rios Building/Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dated: _____
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5