

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

FILED
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REC'D AT REGIONAL CLERK
EPA REGION VI

IN THE MATTER OF:

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SHINTECH INCORPORATED
FREEPORT, TEXAS

Consent Agreement and Final Order
USEPA Docket No.MM-06-2013-0911

RESPONDENT

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. Shintech Incorporated (“Shintech”) is a Delaware corporation authorized to do business in the State of Texas. Shintech owns and operates a facility at 5618 Highway 332 East, Freeport, Texas 77541 that consists of three polyvinyl chloride (“PVC”) plants.

2. This Consent Agreement and Final Order (“CAFO”) is entered into by the United States Environmental Protection Agency (“EPA”), Region 6, and Shintech Incorporated (“Respondent” or “Shintech”) and concerns the facility located at 5618 Highway 332 East, Freeport, Texas 77541 (the “Facility”).

3. Notice of this action has been given to the State of Texas, under Section 3008(a)(2) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a)(2) and Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g).

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

4. Pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), notice of this action has been published and with reasonable opportunity for any interested person to comment on the proposed issuance of the Clean Water Act portion of this CAFO.

5. 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.

6. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

7. The CAFO resolves only those violations which are alleged herein.

8. 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.

9. By its signature to this CAFO, Respondent is certifying, in accordance with the certification language set forth in the Section V.59.f., of the Compliance Order, that Respondent has taken the necessary steps to ensure that all its Emergency Planning and Community Right-to-Know Act ("EPCRA") reporting and other applicable requirements under EPCRA are current and that Respondent is compliant with all the applicable laws and regulations of EPCRA.

10. By its signature to this CAFO, Respondent is certifying, in accordance with the certification language set forth in Section V.59.f., of the Compliance Order, that Respondent has reviewed all its

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

processes associated with its Texas Discharge System Permit, Permit No. TX0053813, to ensure that all its discharges and respective Outfalls, specifically the Outfalls at issue for purposes of this CAFO, are operating in accordance with Permit No. TX0053813.

11. By its signature to this CAFO, Respondent is certifying, in accordance with the certification language set forth in Section V.59.f., of the Compliance Order, that Respondent has shipped its generated "hazardous waste" as defined at Title 30 of the Texas Administrative Code ("TEX.ADMIN.CODE") § 335.1 and 40 C.F.R. § 260.10, and generated during the period of 2010 through February 2, 2013, to a facility that is permitted under the laws of Texas and all applicable federal laws and regulations.

II. JURISDICTION

12. This CAFO is issued by EPA, Region 6, pursuant to Section 3008(a) of the RCRA, 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA"); Section 309(g) of the CWA, 33 U.S.C. § 1319(g); and Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4), 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).

13. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by 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.

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

III. PARTIES BOUND

14. 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.

15. 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. Respondent shall provide a copy of this CAFO within seven (7) days of the Effective Date of this CAFO, or the date that such services are retained, to all contractors, subcontractors, laboratories, and consultants that are retained to conduct or monitor any portion of the work to be performed that will ensure Respondent's compliance with this CAFO.

16. 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.

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

17. Not later than sixty (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 twenty-four (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

18. On or about February 6, 2013, Respondent voluntarily provided to EPA, Region 6, information that lead EPA, Region 6, to conduct further investigation about the activities at Respondent's Facility.

19. EPA's investigation resulted in findings of fact and conclusions of law that Respondent failed to comply with its applicable generator standards, including exceedences of its notified generator status in violation of the laws and regulations of RCRA promulgated at 3002, 3004, and 3005 of RCRA, 42 U.S.C. §§ 6922, 6924, and 6925; that Respondent discharged pollutants into waters of the United States in exceedence of its Permit and in violation of Section 301 of the CWA, 33 U.S.C. § 1311; and that Respondent failed to comply with the Reporting requirements promulgated pursuant to Section 313 of EPCRA, 42 U.S.C. § 11023.

20. In Respondent's Section 3010(a) of RCRA, 42 U.S.C. § 6930(a) Notification, Respondent notified EPA on November 25, 2005, that it operates as a conditionally exempt small quantity generator.

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

21. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); 40 C.F.R. § 260.10; 30 TEX.ADMIN.CODE § 335.1; Section 502(5) of the CWA, 33 U.S.C. § 1362(5); and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

22. At all relevant times hereto, Respondent’s Facility was and continues to be a “facility” as defined under 30 TEX.ADMIN.CODE § 335.1; 40 C.F.R. § 260.10; Section 329(4) of EPCRA, 42 U.S.C. § 11049(4); and 40 C.F.R. §§ 355.20 and 372.3.

23. At all relevant times hereto, Respondent was and continues to be an “owner” and/or “operator” of the Facility as defined under 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 260.10 and as each of these terms is used under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

24. At all times relevant hereto, Respondent has discharged, and continues to discharge, “pollutants” through “point sources” into “navigable waters,” as each of these terms is defined in Section 502 of the CWA, 33 U.S.C. § 1362.

RCRA ALLEGATIONS

Claim i. Failure to Operate within Its Stated Generator Status

25. Pursuant to 30 TEX.ADMIN.CODE § 335.78(a) and 40 C.F.R. § 261.5(a), a conditionally exempt small quantity generator in a calendar month may generate no more than 100 kilograms of hazardous waste.

26. Pursuant to 30 TEX.ADMIN.CODE § 335.78(b) and 40 C.F.R. § 261.5(b), as long as a conditionally exempt small quantity generator complies with the applicable requirement under 30 TEX.ADMIN.CODE §§ 335.78(f), (g) and (j) and 40 C.F.R. §§ 261.5(f), (g) and (j) then the

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

generator's hazardous waste is not subject to regulations under 30 TEX.ADMIN.CODE, Subchapters C-H and O; 40 C.F.R. Parts 262 through 268; 40 C.F.R. Parts 270 and 124; and the requirements of Section 3010 of RCRA, 42 U.S.C. § 6930.

27. Since at least 2010 through February 2, 2013, Respondent, on at least three (3) occasions, exceeded its conditionally exempt small quantity generator status and operated as a Large Quantity Generator in violation of the regulations set forth at 30 TEX.ADMIN.CODE, Subchapters C and/or F and 40 C.F.R. §§ 262.34 and/or 270.

Claim ii. Failure to Operate Within Its Stated Generator Status

28. The allegations that are alleged in Paragraphs 25 through 27 are realleged and incorporated herein this claim.

29. Since at least 2010 through February 2, 2013, Respondent, on at least seven (7) occasions, exceeded its conditionally exempt small quantity generator status and operated as a Small Quantity Generator in violation with the regulations set forth at 30 TEX.ADMIN.CODE, Subchapter C and/or F and 40 C.F.R. §§ 262.34 and/or 270.

Claim iii. Failure to Make Hazardous Waste Determination

30. Pursuant to 30 TEX.ADMIN.CODE § 335.62 and 40 C.F.R. § 262.11(c), a person who generates a solid waste, as defined in 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 261.2, must determine if the waste is hazardous either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

31. Respondent is a “generator” within the meaning of 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 260.10.

32. Since at least 2010 through February 2, 2013, Respondent, on at least two (2) occasions, failed to make a hazardous waste determination on the content of drums and buckets, respectively in its Plant 2 chemical storage area and at or near the sonic washer.

33. The content of the drums and buckets referenced in Paragraph 32 is a solid waste as is defined in 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 261.2.

34. Respondent violated the requirements of RCRA and the regulations promulgated at 30 TEX.ADMIN.CODE § 335.62 and 40 C.F.R. § 262.11(c) by failing to make the requisite hazardous waste determination on all its solid waste streams.

Claim iv. Failure to Meet Specific Generator Requirements

35. Pursuant to 30 TEX.ADMIN.CODE § 335.69 and 40 C.F.R. § 262.34(a) a generator of hazardous waste who accumulates its hazardous waste on site is exempted from the permit or interim status requirements of RCRA, provided the generator complies with the applicable requirements set forth at 30 TEX.ADMIN.CODE § 335.69 and 40 C.F.R. § 262.34, including the marking of its containers of hazardous waste with the words “Hazardous Waste” or with the words that identify the contents of the containers.

36. Since at least 2010 through February 2, 2013, Respondent, on at least two (2) occasions, failed to label its lab pack waste and a container in its satellite container storage area with the words “Hazardous Waste” or with the words that identify the contents of the containers.

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

37. The content of the container and lab pack waste referenced in Paragraph 36 is a "Hazardous Waste" within the meaning of 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 260.10.

38. By failing to make the requisite labeling and/or marking on its containers of hazardous waste, Respondent violated the requirements of RCRA and the regulations promulgated at 30 TEX.ADMIN.CODE § 335.69(d)(2) and 40 C.F.R. §§ 262.34(c)(1) and (c)(1)(ii).

Claim v. Failure to Meet Specific Generator Requirements

39. Pursuant to 30 TEX.ADMIN.CODE § 335.69(a) and 40 C.F.R. § 262.34(a) a generator of hazardous waste is permitted to accumulate its hazardous waste on site for ninety (90) days or less without a permit or the interim status requirements of RCRA, provided the generator complies with the applicable requirements set forth at 30 TEX.ADMIN.CODE § 335.69 and 40 C.F.R. § 262.34.

40. Pursuant to 30 TEX.ADMIN.CODE § 335.69(d) and 40 C.F.R. § 262.34(d), a generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for one hundred and eighty (180) days or less without a permit or the interim status requirements of RCRA, provided the generator complies with the applicable requirements set forth at 30 TEX.ADMIN.CODE § 335.69 and 40 C.F.R. § 262.34.

41. Upon EPA, Region 6's request, Respondent submitted copies of its manifest that demonstrates that Respondent stored hazardous wastes on-site beyond ninety (90) days and/or one-hundred and eighty (180) days on at least six (6) occasions associated with the three (3) and seven (7) exceedences referenced, respectively in Claim i. and Claim ii. alleged herein.

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

42. During the period of 2010 through February 2, 2013, Respondent, on at least six (6) occasions, stored hazardous waste onsite beyond the allowable period for a generator in violation of 30 TEX.ADMIN.CODE § 335.69 and 40 C.F.R. § 262.34.

CWA ALLEGATIONS

Claim vi. Failure to Comply with Its Effluent Limitations

43. The Texas Pollutant Discharge Elimination System (“TPDES”) Permit, Permit No. TX0053813 (the “TPDES Permit”) authorized Shintech to discharge from outfalls, including the Outfalls at issue for purposes of this CAFO-Outfalls: 001; 002; 003; 004; and 005.

44. Outfalls 001 and 004 discharge to DOW “A” Canal; then to the Brazos River Tidal Segment No. 1201 of the Brazos River Basin.

45. Outfalls 002 and 003 discharge to a drainage ditch; thence to East Union Bayou, and then to the Intra-coastal Waterway.

46. Outfall 005 discharges to the Velasco Drainage District Ditch, thence to East Bayou via the Inter-coastal Waterway, and then to Old Brazos River Tidal in Segment No.111 of the San Jacinto-Brazos Coastal Basin.

47. The TPDES Permit provides that Shintech’s discharges shall be made in accordance with the effluent limitations, monitoring requirements, and other conditions set forth in the Permit, as well as the TCEQ rules, the laws of the State of Texas, other TCEQ orders, and with all applicable federal laws and regulations.

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

48. During the period of 2010 through February 2013, Shintech discharged wastewater from its permitted Outfalls 001, 002, 003, 004, and 005.

49. For Outfall 001, Shintech has a discharge limitation of 505 lbs./day (daily max.) for Biochemical Oxygen Demand (“BOD”). For Outfall 002, Shintech has a discharge limitation of 200 mg/L (daily max.) for Chemical Oxygen Demand (“COD”). For Outfall 003, Shintech has a discharge limitation of 200 mg/L (daily max.) for COD. For Outfall 004, Shintech has a discharge limitation of 444 lbs./day (daily max.) for BOD, 2,428 lbs./day (daily max.) for COD, and 150 mg/L (daily max.) for Oil and Grease. For Outfall 005, Shintech has a discharge limitation of 150 mg/L (daily max.) for COD.

50. Shintech’s Discharge Monitoring Reports demonstrate that Shintech exceeded the Discharge Limitations, which are referenced in Paragraph 49, on several occasions for Outfalls 001, 002, 003, 004, and 005.

51. Respondent, on at least nineteen (19) occasions, violated its TPDES Permit No. TX0053813 and Section 301 of the CWA, 33 U.S.C. § 1311, by exceeding the effluent limitations contained in the permit.

EPCRA ALLEGATIONS

Claim vii. Failure to Timely Submit Form Rs

52. The chemical substances lead, methanol, antimony compounds, chromium compounds, n-methyl-2-pyrrolidone, and nickel is each a “toxic chemical” as defined by 40 C.F.R. § 372.3 and as listed in 40 C.F.R. § 372.65.

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

53. Shintech operates a “covered facility” within the meaning of 40 C.F.R. § 372.22.

54. The Respondent's facility has ten (10) or more “full-time employees” as that term is defined by 40 C.F.R. § 372.3.

55. The threshold quantity, for reporting purposes under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b) for a toxic chemical, which is “otherwise used” or “processed,” respectively, at a facility, is 10,000 pounds and 25,000 pounds for the 2009 and 2010 calendar years as set forth in Section 313(f)(1)(A) and (B) of EPCRA, 42 U.S.C. § 11023(f)(1)(A) and (B), and 40 C.F.R. § 372.25(b).

56. Shintech otherwise used more than 10,000 pounds of each of the chemicals identified in paragraph 52 during the calendar years 2009 and 2010 and, in some instances, Shintech processed more than 25,000 pounds of specific chemical(s) identified in paragraph 52.

57. Pursuant to 40 C.F.R. § 372.30(a), Shintech was required to submit to EPA and to the TCEQ a complete Form R (EPA Form 9350-1) in accordance with the instructions in 40 C.F.R. Part 372, Subpart E.

58. On at least eight (8) occasions, Respondent failed to submit its Form Rs for chemicals otherwise used or processed at its Facility during the calendar years 2009 and 2010 in violation of 40 C.F.R. § 372.30(a) and 40 C.F.R. Part 372, Subpart E.

V. COMPLIANCE ORDER

59. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and submit any and all documents, photos, and/or other appropriate evidence, required by this compliance order, to EPA and within the time period specified below:

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

- a) Within ninety (90) days of the effective date of this CAFO, Respondent shall accurately assess its monthly generation of hazardous waste and either: (1) modify its RCRA 3010 Notification for hazardous waste management activity; or (2) certify as to the accuracy of its current status as a Conditionally Exempt Small Quantity Generator, whichever is appropriate. Upon determination of its generator status, Respondent must immediately begin to comply with all applicable and appropriate requirements for Respondent's hazardous waste generators status.
- b) Within ninety (90) days of the effective date of this CAFO, Respondent shall take the necessary steps to ensure that containers storing hazardous waste are labeled or marked clearly with the words "Hazardous Waste" or with the words that identify the contents of the containers and pursuant to 30 TEX.ADMIN.CODE § 335.69(d)(2) and 40 C.F.R. §§ 262.34(c)(1) and (c)(1)(ii).
- c) Within ninety (90) days of the effective date of this CAFO, Respondent shall take the necessary steps to ensure that hazardous waste determinations are conducted on all solid waste streams generated at Respondent's Facility and pursuant to 30 TEX.ADMIN.CODE § 335.62 and 40 C.F.R. § 262.11.
- d) Within ninety (90) days of the effective date of this CAFO, Respondent shall ensure that it has a system in place that will guarantee that all shipments of its hazardous waste offered for off-site treatment, storage, and/or disposal are made pursuant to 30 TEX.ADMIN.CODE §§ 335.10(a) and 335.13(i) and 40 C.F.R. §§ 262.20 and 262.40(a).
- e) For each requirement described and listed in Subparagraphs 59 a, b, c, and d above, the Respondent shall provide written submission to the EPA within one hundred and twenty (120) days of the effective date of this CAFO that such requirement has been completed as is required herein.
- f) In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer or officer's designee of Shintech and shall include the following certification:

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.

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

Copies of all documents required by this CAFO shall be sent to the following:

U.S. EPA, Region 6
Hazardous Waste Enforcement Branch
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Attn: Mr. Gabriel Salinas

VI. TERMS OF SETTLEMENT

i. Penalty Provisions

60. Pursuant to the authority granted in Section 3008(g) of RCRA, 42 U.S.C. § 6928(g); Section 309(g) of the CWA, 33 U.S.C. § 1319(g); Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) 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 February 2, 2013, and its prompt responses following the February 2, 1013, correspondence, it is ordered that Respondent be assessed a civil penalty of six hundred fifty-one thousand seven hundred and sixty-eight dollars (\$651,768.00).

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

61. The penalty shall be paid within thirty (30) of the effective date of this CAFO by one of the following methods:

- a. By mailing a bank check, cashier's check, or certified check payable to "Treasurer, United States," to the following address:

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

- b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

- c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank
Government Lockbox 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone: 314-418-1028

- d. By credit card payments to <https://www.pay.gov/paygov>

(Insert SFO 1.1 in the search field)

"In the matter of Shintech Incorporated, Docket No. MM-06-2013-0911" shall be clearly marked on the check, or other remittance, to ensure proper credit is given when payment is received.

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

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

Ms. Lorena S. Vaughn
Regional hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Attention: Mr. Gabriel Salinas

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

63. 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 fifteen dollar (\$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 fifteen dollars (\$15.00)

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

for each subsequent thirty (30)-day period the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) 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).

64. 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.

VII. GENERAL PROVISIONS

ii. Stipulated Penalties

65. 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	\$1,000.00
16th through 30th day	\$5,000.00
31st day and beyond	\$10,000.00

66. Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

67. The payment of stipulated penalties shall be made in accordance with the options set forth in Subsection i. (Penalty Provisions) of Section VI of this CAFO.

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

68. The Respondent shall send simultaneous notices of such payments to the following:

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

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Chief, RCRA Legal Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

69. 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.

70. In addition to the stipulated penalties set forth above, EPA specifically reserves the right to seek other remedies or sanctions available to the EPA by reason of the Respondent's failure to comply with the requirements of this CAFO, including sanctions that EPA may seek under RCRA, the CWA, and EPCRA.

71. If the Respondent disputes the basis for imposition of stipulated penalties, the issue shall be resolved under the Dispute Resolution procedures of this CAFO. All stipulated penalties shall continue

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

to accrue through the period that the dispute resolution is ongoing. Invoking dispute resolution shall not stay the accrual of stipulated penalties; however, the obligation to pay shall be stayed pending resolution of the dispute.

iii. Dispute Resolution

72. If the Respondent objects to any decision or directive of EPA in regard to Section V. (Compliance Order) or Section VI.ii. (Stipulated Penalties), the Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Chief, RCRA Legal Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

73. The RCRA Enforcement Associate Director ("Associate Director") or his/her designee and the Respondent shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondent, the agreement shall be reduced to writing and signed by the Branch Chief and the Respondent and incorporated by reference into this CAFO.

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

74. If no agreement is reached between the Associate Director and the Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division (“Division Director”) or his/her designee. The Division Director and the Respondent shall then have a second fifteen (15)-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this CAFO. If the Division Director and the Respondent are unable to reach agreement within this second fifteen (15)-day period, the Division Director shall provide a written statement of EPA’s decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the CAFO.

75. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to the Subsection on Modification, below.

iv. Notification

76. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other party that another individual has been designated to receive the communication:

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

EPA: Chief, Compliance and Enforcement Section (6EN-IIE)
Hazardous Waste Enforcement Branch
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Respondent: Mr. Tim O'Brien
Plant Manager
Shintech Incorporated
5618 Highway 332 East
Freeport, TX 77541

With Copy to: Mr. W. David Tidholm
Porter Hedges LLP
1000 Main St., Suite 3600
Houston, TX 77002

v. Modification

77. 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.

vi. Retention of Enforcement Rights

78. 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.

79. 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,

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

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.

vii. Indemnification

80. 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.

viii. Record Preservation

81. 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.

ix. Cost

82. 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.

x. Termination and Satisfaction

83. This CAFO shall be terminated at such time as Respondent, by its showing, demonstrates 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.

xi. Effective Date of Settlement

84. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:

Date: 10-21-2013

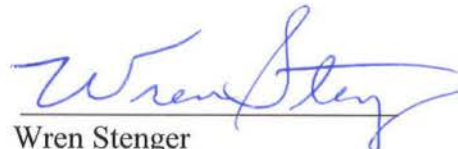

Tim O'Brien
Plant Manager
Shintech Incorporated

FOR THE COMPLAINANT:

Date: 11-19-13


John Blevins
Director
Compliance Assurance and
Enforcement Division

Date: 11/12/13



Wren Stenger
Director
Multimedia Planning and
Permitting Division

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

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: November 21, 2013


Regional Judicial Officer

Re: Shintech Incorporated
Docket No. MM-06-2013-0911

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of November, 2013, 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,
Addressed to the following:

7003 0500 0003 0872 1202

Mr. Tim O'Brien
Plant Manager
Shintech Incorporated
5618 Highway 332 East
Freeport, TX 77541

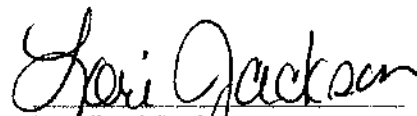
With a copy, first class postage prepaid, to:

Mr. W. David Tidholm
Porter Hedges LLP
1000 Main St., Suite 3600
Houston, TX 77002

Mr. Bryan Sinclair
Director, Enforcement
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Hand-delivered:

Ms. Marcia Moncrieffe (6RC- ER)
Assistant Regional Counsel
RCRA Legal Branch


Ms. Lori Jackson
Paralegal