

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED

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EPA REGION 6

IN THE MATTER OF:

AIRGAS SPECIALTY PRODUCTS, AN
AIR LIQUIDE COMPANY
WAXAHACHIE, TEXAS

RESPONDENT

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DOCKET NO. EPCRA-06-2018-0503

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division, United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Airgas Specialty Products, an Air Liquide Company (Respondent), in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c), is simultaneously commenced and concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. For the purposes of this proceeding, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO.

3. Respondent explicitly waives any right to contest the allegations and its right to appeal the Final Order set forth herein, and waives all defenses which have been raised or could have been raised to the claims set forth in this CAFO.

4. EPA and Respondent agree that the settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO shall resolve only the violations that are set forth herein.

5. Respondent consents to the issuance of this CAFO and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

6. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of Respondent is duly authorized to bind Respondent to the terms and conditions of this CAFO.

7. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

8. Respondent hereby certifies that as of the date of the execution of this CAFO, Airgas Specialty Products has corrected the violations alleged in this CAFO, and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, 40 C.F.R. Part 372, and Section 6607 of the Pollution Prevention Act ("PPA"), 42 U.S.C. § 13106.

II. STATUTORY AND REGULATORY BACKGROUND

9. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that (a) has ten or more full-time employees; (b) is an establishment with a primary Standard Industrial Classification (“SIC”) major group or industry code listed in 40 C.F.R. § 372.23(a), or a primary North American Industry Classification System (“NAICS”) subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) manufactured, processed, or otherwise used a toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold amounts established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, or 372.28 during the preceding calendar year; to complete and submit a toxic chemical release form (Form R) to the Administrator of EPA and to the State in which the subject facility is located by July 1, for each toxic chemical known by the owner or operator to be manufactured, processed, or otherwise used in amounts exceeding the established threshold amount during that preceding calendar year.

10. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30, is 25,000 pounds for any toxic chemical manufactured or processed, and 10,000 pounds for any toxic chemical otherwise used for the applicable calendar year. Other reporting thresholds are set forth in 40 C.F.R. §§ 372.27 and 372.28.

11. Section 313(g) of EPCRA, 42 U.S.C. § 11023(g)(1)(C)(iii), and 40 C.F.R. § 372.85(b)(16) require that a Form R shall include information relative to onsite waste treatment

of the chemical, including the type of wastestream treated, the treatment method applied, and an estimate of the efficiency of the treatment.

12. Section 6607 of the PPA, 42 U.S.C. § 13106, requires that each owner or operator of a facility required to file an annual toxic chemical release form under Section 313 of EPCRA, 42 U.S.C. § 11023, for any toxic chemical shall include, with each such annual filing, a toxic chemical source reduction and recycling report for the preceding calendar year. The toxic chemical source reduction and recycling report shall cover each toxic chemical required to be reported in the annual toxic chemical release form filed by the owner or operator under Section 313(c) of EPCRA, 42 USC § 11023(c).

13. According to Section 6607(b)(8) of the PPA, 42 U.S.C. § 13106(b)(8), the toxic chemical source reduction and recycling report shall include the amount of the chemical that is treated (at the facility or elsewhere) during the calendar year, and the percentage change from the previous year.

14. Section 6607(c) of the PPA, 42 U.S.C. § 13106(c), provides that Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) applies to the reporting requirements of Section 6607 of the PPA, 42 U.S.C. § 13106(c), in the same manner as to the reports required under Section 313 of EPCRA, 42 U.S.C. § 11023. EPA may modify the Form R required under Section 313 of EPCRA, 42 U.S.C. § 11023 to the extent deemed necessary to include the additional information required under Section 6607 of the PPA, 42 U.S.C. § 13106.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

15. Respondent is incorporated under the laws of the State of Delaware and is authorized to do business in the State of Texas.

16. Respondent is a "person", as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

17. Respondent owns and operates a "facility", as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. §11049(4), at 6260 Interstate 35 East, Waxahachie, Texas, 75165 ("Facility").

18. The Facility had ten (10) or more "full-time employees", as that term is defined by 40 C.F.R. § 372.3, for the 2014 calendar year.

19. The Facility's primary NAICS industry code 424690 (Other Chemical and Allied Products Merchant Wholesalers) is listed in 40 C.F.R. § 372.23(c).

20. Dimethylamine is a "toxic chemical" within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

21. During the 2014 calendar year, dimethylamine was "processed" as that term is defined by 40 C.F.R. § 372.3, at the Facility. As such, Respondent is subject to the regulatory and statutory provisions cited herein.

22. An inspection of the Facility was conducted on May 25, 2017, by a duly authorized representative of the EPA's Region 6 office. Based on information provided by Respondent, the following violations are alleged.

B. VIOLATIONS

Count One – Failure to Report Information Relative to the On-Site Treatment of Dimethylamine for 2014

23. During the 2014 calendar year, Respondent processed dimethylamine at the Facility in excess of the 25,000-pound threshold amount.

24. During the 2014 calendar year, Respondent treated dimethylamine onsite.

25. Respondent submitted a Form R for dimethylamine by July 1, 2015, that contained no information relative to the type of wastestream treated and the treatment method applied, nor an estimate of the efficiency of the treatment, for the 2014 calendar year.

26. Therefore, Respondent violated Section 313(g) of EPCRA, 42 U.S.C. § 11023(g)(1)(C)(iii), and 40 C.F.R. § 372.85(b)(16), by submitting a Form R that did not include information relative to the onsite treatment of the chemical for the 2014 calendar year to the EPA and to the State of Texas.

Count Two – Failure to Report the Amount of Dimethylamine Treated Onsite for 2014

27. During the 2014 calendar year, Respondent processed dimethylamine at the Facility in excess of the 25,000-pound threshold amount.

28. During the 2014 calendar year, Respondent treated dimethylamine onsite.

29. Respondent submitted a Form R for dimethylamine by July 1, 2015, that contained no information on the amount of the chemical that was treated onsite for the 2014 calendar year, nor the percentage change from the previous year.

30. Therefore, Respondent violated Section 6607(b)(8) of the PPA, 42 U.S.C. § 13106(b)(8), by submitting a Form R that did not include the amount of the chemical that was treated onsite for the 2014 calendar year, nor the percentage change from the previous year, to the EPA and to the State of Texas.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

31. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), which authorizes the EPA to assess a civil penalty of up to \$55,907 per day for each violation of EPCRA.^[1] 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 nature, circumstances, extent and gravity of the alleged violations, and with respect to Respondent, ability to pay, lack of prior EPCRA Section 313 violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, cooperation, institution of corrective actions, and other factors as justice may require, it is **ORDERED** that Respondent be assessed a civil penalty of **One Thousand, Four Hundred and Seventy Dollars (\$1,470.00)**, which will settle the violations as alleged herein.

32. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the fully-assessed civil penalty of \$1,470.00, by certified check, cashier's check, or wire transfer,

^[1] The amount of penalty that can be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) was increased by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 codified at 40 C.F.R. Part 19.

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made payable to “Treasurer, United States of America, EPA - Region 6”. Payment shall be remitted in one of three (3) ways: regular U.S. Postal Service mail (including certified mail), overnight mail, or wire transfer. 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
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g., Fed Ex), the check(s) 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
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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”

PLEASE NOTE: Docket number EPCRA-06-2018-0503 shall be clearly typed on the check, or other method of payment, to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference Respondent’s

name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference Respondent's name and address, the case name, and docket number of the CAFO. Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

David Riley
EPCRA 313 Enforcement Officer (6EN-H3)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

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

Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

33. The 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.

34. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action pursuant to Section 325(f) of EPCRA, 42 U.S.C. § 11045(f), to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties as set forth below.

35. 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).

36. 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 dollar (\$15.00) charge for each subsequent thirty (30) day period that 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. *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.

37. This document is a "Final Order" as that term is defined in the "Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)," dated August 10, 1992; Amended, April 12, 2001; for the purpose of demonstrating a history of "prior such violations".

B. RETENTION OF ENFORCEMENT RIGHTS

38. EPA does not waive any rights or remedies available to EPA for any other violations by Respondent of Federal or State laws, regulations, or permitting conditions.

39. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of Section 313 of EPCRA, 42 U.S.C. § 11023, 40 C.F.R. Part 372, and Section 6607 of the PPA.

40. 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, or contaminants on, at, or from Respondent's facility. Furthermore, 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.

C. COSTS

41. 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 5 U.S.C. § 504 and 40 C.F.R. Part 17.

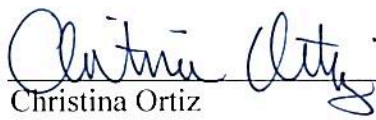
D. EFFECTIVE DATE

42. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

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

FOR THE RESPONDENT:


Date: 2/21/18



Christina Ortiz
Director, EHS
Airgas Specialty Products,
an Air Liquide Company

FOR THE COMPLAINANT:

Date: 3/13/2018



Cheryl T. Seager
Director
Compliance Assurance &
Enforcement Division
U.S. EPA, Region 6

V. FINAL ORDER

Pursuant to 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 the Consent Agreement. 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. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions 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

3/14/18



Thomas Rucki
Regional Judicial Officer
U.S. EPA Region 6

CERTIFICATE OF SERVICE

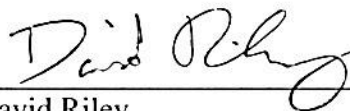
I hereby certify that on the 19th day of March, 2018, the original and one copy of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following individual(s) by the method(s) indicated below:

Certified Mail – Return Receipt # 7015 3430 0000 5839 9544

Christina Ortiz
Director, EHS
Airgas Specialty Products,
an Air Liquide Company
2530 Sever Road, Suite 30
Lawrenceville, GA 30043

Email (PDF)

christina.ortiz@airgas.com



David Riley
EPCRA § 313 Inspector/Enforcement Officer
U.S. EPA, Region 6