

3. Evonik Corporation (“Evonik” or “Respondent”) is a corporation doing business in the State of Louisiana. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this Consent Agreement along with the corresponding Final Order hereinafter known together as the “CAFO” without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this CAFO.

B. JURISDICTION

5. This CAFO is entered into under Section 113(d) of the Act, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this CAFO are pursuant to Section 113(a)(1)(B) of the Act, 42 U.S.C. § 7413(a)(1)(B).

6. In satisfaction of the notice requirements of Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), on January 20, 2023, EPA issued to Respondent a Notice of Violation and Opportunity to Confer (the “NOVOC”) and provided a copy of the NOVOC to the State of Louisiana. In the NOVOC, EPA provided notice to both Respondent and the State of Louisiana that EPA found Respondent committed the alleged violations of Louisiana State Implementation Plan (“SIP”) described in Section E of this CAFO and provided Respondent an opportunity to confer with EPA. Representatives of Respondent and EPA initially discussed the violations alleged in the NOVOC on December 16, 2022, and at various other subsequent times.

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. The issuance of this CAFO simultaneously commences and concludes this proceeding.
40 C.F.R. § 22.13(b).

C. DEFINITIONS

9. "Assist steam" means all steam that intentionally is introduced prior to or at a flare tip through nozzles or other hardware conveyance for the purposes including, but not limited to, protecting the design of the flare tip, promoting turbulence for mixing or inducing air into the flame.

10. "Combustion zone" means the area of the flare flame where the combustion zone gas combines for combustion.

11. "Combustion zone gas" means all gases and vapors found just after a flare tip. This gas includes all flare vent gas, total steam, and premix air.

12. "Control device" means any equipment used for recovering, removing, or oxidizing organic hazardous air pollutants. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters.

13. "Delay of Repair" means allowing for a delay in completing repairs for equipment for which leaks have been detected if repair within 15 days is technically infeasible without a process unit shutdown. Repair of this equipment shall occur by the end of the next process unit shutdown.

14. "First attempt at repair" means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

15. "Flare" means a combustion device lacking an enclosed combustion chamber that uses an uncontrolled volume of ambient air to burn gases.

16. "Flare supplemental gas" means all gas introduced to the flare to improve the heat content of combustion zone gas. Flare supplemental gas does not include assist air or assist steam.

17. "Flare sweep gas" means the gas intentionally introduced into the flare header system to maintain a constant flow of gas through the flare header and out the flare tip in order to prevent oxygen buildup in the flare header and to prevent oxygen infiltration (backflow) into the flare tip.

18. "Flare vent gas" means all gas found just prior to the flare tip. This gas includes all flare waste gas (i.e., gas from facility operations that is directed to a flare for the purpose of disposing of the gas), that portion of flare sweep gas that is not recovered, flare purge gas and flare supplemental gas, but does not include pilot gas, total steam or assist air.

19. "Fugitive emissions" means those emissions from a stationary source that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Under section 112 of the Act, all fugitive emissions are to be considered in determining whether a stationary source is a major source.

20. "Hazardous air pollutant" or "HAP" means one of the chemicals listed in section 112(b) of the Clean Air Act.

21. "Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not Malfunctions.

22. "Net heating value" means the energy released as heat when a compound undergoes complete combustion with oxygen to form gaseous carbon dioxide and gaseous water (also referred to as lower heating value).

23. "Organic hazardous air pollutant" or "organic HAP" means one of the chemicals listed in table 2 of 40 C.F.R. 63 Subpart F.

24. "Performance test" means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance or establish enforceable operating parameters for a control device.

25. "Pilot gas" means gas introduced into a flare tip that provides a flame to ignite the flare vent gas.

26. "Regulated material" or "waste gas" means any mixture of all gases from the Facility operations that is directed to a control device for the purpose of disposing of the gas.

27. "Shutdown" means the cessation of operation of an apparatus at the Facility for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair, the cessation of operation of a chemical manufacturing process unit or a reactor, air oxidation reactor, distillation unit, waste management unit, or the emptying and degassing of a storage vessel. Shutdown does not include the routine rinsing or washing of equipment in batch operation between batches.

28. "Startup" means the setting in operation of an apparatus at the Facility including, but not limited to, a chemical manufacturing process unit or a reactor, air oxidation reactor, distillation unit, waste management unit, or a storage vessel after emptying and degassing.

29. "Visible emission" means the observation of an emission of opacity or optical density above the threshold of vision.

D. GOVERNING LAW

30. The Act is designed “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

31. EPA is authorized by Section 113 of the CAA, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements. These include requirements promulgated by EPA and those contained in SIPs.

Louisiana State Implementation Plan Requirements

32. Section 109(a) of the CAA, 42 U.S.C. § 7409(a), requires the Administrator of EPA to publish national ambient air quality standards (“NAAQS”) for certain pollutants. The NAAQS establish primary air quality standards to protect public health and secondary standards to protect public welfare.

33. To achieve the objectives of the NAAQS and the CAA, Section 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each State to adopt a state implementation plan (“SIP”) that provides for the implementation, maintenance, and enforcement of the NAAQS, and submit it to the Administrator of the EPA for approval.

34. The State of Louisiana has adopted a SIP that has been approved by EPA. *See* 40 C.F.R. Part 52, Subpart T.

35. The provisions of LAC 33:III.501 of the federally approved Louisiana SIP govern any owner and operator of any source which emits or has the potential to emit any air contaminant in

the state of Louisiana. The provisions of LAC 33:III.501 of the Louisiana SIP relevant to this CAFO were approved by EPA on August 4, 2016. *See* 781 Fed. Reg. 51,341) (August 4, 2016).

- a. The provisions of LAC 33:III.501 define “source” to include any nonmajor (minor) source required to obtain an air quality permit pursuant to this Chapter or to other regulations promulgated by the Louisiana Department of Environmental Quality (“LDEQ”).
- b. LAC 33:III.501.C.2 of the Louisiana SIP provides that no construction, modification, or operation of a facility which ultimately may result in an initiation increase in emission of air contaminants as defined in LAC 33:III.111 shall commence until the permit application has been approved, an appropriate permit fee paid (in accordance with LAC 33:III.Chapter 65 [now Chapter 2]) and a permit (certificate of approval) has been issued by the permitting authority.

36. The provisions of LAC 33:III.503 govern minor source permit requirements and provide that each source with emissions below levels defining a major source, as defined under any chapter of LAC 33:III, do not relieve the owner or operator from the obligation to obtain a permit.

37. LAC 33:III.111 defines air contaminants as particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combination thereof produced by process other than natural.

E. FINDINGS OF FACT AND CONCLUSIONS OF LAW

38. Respondent owns and/or operates the Reserve Plant, located at 474 West 19th Street, Reserve, Louisiana 70084 (the “Facility”).

39. At all times relevant to this proceeding, Respondent has owned and/or operated the Facility.

40. Respondent is the owner and/or operator of the Facility within the meaning of 40 C.F.R. § 51.100(f) and LAC 33:III.111 of the Louisiana SIP, 54 Fed. Reg. 9795 (March 8, 1989).

41. At all times relevant to this proceeding, Respondent owned and/or operated units that emit HAPs and Volatile Organic Compounds (“VOCs”), including Ethylene Oxide (“EtO”) and Ethylene Glycol (“EG”) at the Facility.

42. The Facility is an alkoxyate alcohols production facility.

43. The Facility is a “stationary source” within the meaning of Section 112(a)(3) of the Act, 42 U.S.C. § 7412(a)(3), and LAC 33:III.502 of the Louisiana SIP, 81 Fed. Reg. 51341 (August 4, 2016).

44. The Facility is a “nonmajor” or minor source of Toxic Air Pollutants (“TAPs”) within the meaning of LAC 33:III.503 of the Louisiana SIP, 81 Fed. Reg. 51,341 (August 4, 2016).

45. On or about December 3, 2020, Respondent was issued Permit No. 2580-00023-09 (the “Permit”), an air permit issued under the Louisiana Permit Program. The Permit covers various emissions units at the Facility, including FUG 0001 Fugitive Emissions (“fugitive emissions”) and EQT 74 Vent Scrubber (the “Scrubber”).

46. The Facility is subject to the Louisiana SIP.

47. The Scrubber controlled emissions from waste and process streams that contained EtO and other HAPs at the Facility, including storage tanks and reactors, and is an authorized emissions point according to the Permit.

48. The Scrubber was permitted to emit no more than 1.22 tons per year (“tpy”) of EtO at the Facility.

49. The Facility is permitted to emit less than 0.01 tpy of EG.

50. On April 18, 2022, EPA inspectors conducted an on-site inspection at the Facility. On June 28, 2022, EPA issued the inspection report.

51. On September 27, 2022, EPA issued a CAA 114 Information Request (“Information Request”) to Respondent. Respondent submitted responses on December 5, 2022.

52. During and after the inspection, and in response to the Information Request, Respondent provided information to EPA regarding Facility operations, control devices, and reporting between January 1, 2018, and September 27, 2022.

53. Of relevance to this CAFO, the information submitted included the Facility’s reverified emissions modeling which estimated emissions from January 1, 2022, through September 27, 2022. Respondent states that the Information Request emissions calculations were completed on or about November 17, 2022.

54. Respondent informed EPA that it ceased operations on or about November 18, 2022. Operations remained shut down until installation of a temporary flare on or about February 3, 2023.

55. On November 28, 2022, Respondent notified LDEQ that they may have deviated from permitted emissions limits at the Scrubber.

56. Based on the April 18, 2022 on-site inspection, subsequent review of documents provided by the Facility during and after the inspection, and in response to the Information

Request, and other disclosures made by Respondent, EPA identified alleged violations of the CAA at the Facility as described in Section F of this CAFO.

F. ALLEGED VIOLATIONS

Claim 1: Excess Emissions of EtO

57. The Facility is subject to LAC 33:III.501.C.2, under which Respondent was and is prohibited from operating a facility in a way which ultimately may result in an increase of emission of air contaminants until a permit has been issued by the permitting authority.

58. On information and belief, Respondent released 2.21 tons of EtO from the Scrubber from January 1 through November 18, 2022.

59. Respondent violated LAC 33:III.501.C.2 in 2022 by failing to operate their facility in accordance with permitted emissions limits, resulting in at least 0.99 tons of excess emissions of EtO.

Claim 2: Excess Emissions of Fugitive EG

60. The Facility is subject to LAC 33:III.501.C.2, under which Respondent was and is prohibited from operating a facility in a way which ultimately may result in an increase of emission of air contaminants until a permit has been issued by the permitting authority.

61. On information and belief, Respondent may have released up to 1.98 tons of EG from the Facility from January 1 through September 27, 2022.

62. Respondent informed EPA that all operations resulting in excess EG emissions were shut down on November 18, 2022.

63. Respondent violated LAC 33:III.501.C.2 in 2022 by failing to operate their facility in accordance with permitted emissions limits, resulting in up to 1.97 tons of excess fugitive emissions of EG.

G. CIVIL PENALTY AND CONDITIONS OF SETTLEMENT

General

64. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
- b. neither admits nor denies the specific factual allegations contained in the CAFO;
- c. consents to the assessment of a civil penalty, as stated below;
- d. consents to the performance of the Supplemental Environmental Project (“SEP”) set forth herein;
- e. consents to the issuance of any specified compliance or corrective action order¹;
- f. consents to the conditions specified in this CAFO;
- g. consents to any stated Permit Action²;
- h. waives any right to contest the alleged violations set forth in Section E of this CAFO; and
- i. waives its rights to appeal the Final Order included in this CAFO.

65. For the purpose of this proceeding, Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;

¹ Although 40 C.F.R. § 22.18(b)(2) requires each subbullet, d. and f. are not applicable to this particular case.

² *See id.*

- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action;
- c. 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 any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1);
- d. consents to personal jurisdiction in any action to enforce this CAFO in the United States District Court for the Eastern District of Louisiana;
- e. waives any right it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action; and
- f. agrees that in any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim splitting, or other defenses based on any contention that the claims raised by the Complainant or the United States were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to this CAFO.

Penalty Assessment and Collection

66. 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, Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of any penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, EPA has assessed a civil penalty in the amount of \$75,000 (the "EPA Penalty"). The EPA Penalty has been determined in accordance with Section 113 of the CAA, 42, U.S.C. § 7413, and at no time exceeded EPA's statutory authority.

67. Respondent agrees to:

- a. pay the EPA Penalty within 30 calendar days of the Effective Date of this CAFO;
and
- b. pay the EPA Penalty by cashier's check, certified check, or wire transfer made payable to "Treasurer, United States of America, EPA – Region 6." Payment shall be remitted in one of five (5) ways: (1) regular U.S. Postal Service mail including certified mail; (2) overnight mail; (3) wire transfer; (4) Automated Clearinghouse for receiving U.S. currency; or (5) Online Payment.

For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, payment 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.* FedEx), payment 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, 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 “remittance express” or “REX”):

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: Jesse White
(301) 887-6548

For Online Payment:

<https://www.pay.gov/paygov/>
Enter sfo 1.1 in search field
Open form and complete required fields.

PLEASE NOTE: The docket number CAA-06-2023-3320 should be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter that shall reference Respondent's name and address, the case name, and docket number CAA-06-2023-3320. Respondent's adherence to this request will ensure proper credit is given when penalties are received for Region 6. Respondent shall also email a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following email addresses:

Dr. Sarah Frey
U.S. EPA Region 6
Frey.Sarah@epa.gov

And

Region 6 Hearing Clerk
U.S. EPA Region 6
Vaughn.Lorena@epa.gov

68. Respondent agrees to pay the following on any overdue EPA Penalty:

- a. Interest. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any unpaid portion of a civil penalty must bear interest at the rates established pursuant to 26 U.S.C. § 6621(a)(2).
- b. Nonpayment Penalty. On any portion of a civil penalty more than ninety (90) calendar days delinquent, Respondent must pay a nonpayment penalty, pursuant to

Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), which shall accrue from the date the penalty payment became delinquent, and which shall be in addition to the interest which accrues under subparagraph a. of this Paragraph.

69. Respondent shall pay a charge to cover the cost of processing and handling any delinquent penalty claim, pursuant to 42 U.S.C. § 7413(d)(5), including, but not limited to, attorney's fees incurred by the United States for collection proceedings.

70. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:

- a. refer the debt to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court (in which the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review) to secure payment of the debt, which may include the original penalty, enforcement and collection expenses, nonpayment penalty and interest, 42 U.S.C. § 7413(d)(5) and 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- b. collect the above-referenced debt by administrative offset (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

- c. suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

Conditions of Settlement

71. Prior to lodging of this CAFO, Respondent replaced EQT 74, Vent Scrubber, with a temporary flare. The temporary flare was operational on February 3, 2023.

72. Respondent shall operate a control device at all times when regulated material may be routed to a control device.

73. Within 120 days of the effective date of this CAFO, Respondent shall submit any necessary permit applications to LDEQ for a permit modification that incorporates the requirements of Paragraphs 75, 78-84, and 95-99 into their State Minor Source permit.

74. Respondent shall submit any necessary permit application to LDEQ for a permit modification that updates permit emission limits to accurately reflect emissions from point sources, fugitive emissions, and new equipment.

75. At all times, including during periods of startup, shutdown, or malfunction, the Respondent must implement good air pollution control practices to minimize emissions from each control device.

Flares

76. By the effective date of this CAFO, Respondent shall operate a temporary flare that meets the requirements of Paragraphs 78-84.

77. Within 365 days of the effective date of this CAFO, Respondent shall install and operate a permanent flare that meets the requirements of Paragraphs 78-84.

78. Respondent shall operate the flare to achieve a Destruction and Removal Efficiency (“DRE”) of 98% or higher for VOCs and HAPs, including ethylene oxide, propylene oxide, and methyl isobutyl ketone at all times regulated materials are routed to a flare.

79. *Continuously Lit Pilot Flame* – Respondent shall operate the flare with a pilot flame present at all times when regulated material may be routed to the flare. Each 15-minute block during which there is at least one minute where no pilot flame is present when regulated material is routed to the flare is a deviation of the requirement. The pilot flame shall be continuously monitored using a device (including, but not limited to, a thermocouple, ultraviolet beam sensor, or infrared sensor) capable of detecting that the pilot flame is present.

80. *Visible Emissions* – Respondent shall operate the flare with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours, when regulated material is routed to the flare. The Respondent shall monitor for visible emissions from the flare as specified in 40 C.F.R. 63.670(h).

81. *Flare tip velocity* – Respondent shall operate the flare with an actual flare tip velocity (“Vtip”) less than 60 feet per second whenever regulated material is routed to the flare. The Respondent shall monitor Vtip using the procedures specified in 40 C.F.R. 63.670(i) and (k).

82. *Net Heating Value in the Combustion zone* – Respondent shall operate the flare such that the net heating value of flare combustion zone gas (“NHVcz”) is at or above 270 British thermal units per standard cubic feet (“BTU/scf”) determined on a 15-minute block period basis when regulated material is routed to the flare. The Respondent shall monitor and calculate NHVcz as specified in 40 C.F.R. 63.670(m).

- a. In the event that the net heating value of the vent gas (“NHVvg”) cannot be monitored on a 15-minute basis, then the Respondent shall use a value of 0 BTU/scf in the calculation for NHVcz, specified in 40 C.F.R. 63.670(m).

83. *Flare vent gas, steam assist flow rate monitoring* –

- a. The Respondent shall install, operate, calibrate, and maintain a monitoring system capable of continuously measuring, calculating, and recording the volumetric flow rate in the flare header or headers that feed the flare as well as any flare supplemental gas used.
- b. The Respondent shall install, operate, calibrate, and maintain a monitoring system capable of continuously measuring, calculating, and recording the volumetric flow rate of assist steam used with the flare.
- c. The Respondent shall follow flow monitoring system requirements and acceptable alternatives specified in 63.670(i)(1) through (6).

84. *Recordkeeping* – For each flare, the Respondent shall keep the records specified in 40 CFR 63.655(i)(9).

Thermal Oxidizer

85. Within 365 days of the effective date of this CAFO, Respondent shall install and operate a thermal oxidizer that meets the requirements of Paragraphs 87-91.

86. Upon operation, the thermal oxidizer shall become be the primary control device and the permanent flare, operated in accordance with the requirements of Paragraphs 78-84, shall be the backup control device. Respondent shall route regulated materials to the backup control device only during periods of startup, shutdown, or malfunction of the primary control device.

87. Respondent shall operate the thermal oxidizer to achieve DRE of 99.9% or higher for VOCs and HAPs, including ethylene oxide, propylene oxide, and methyl isobutyl ketone at all times regulated materials are routed to the thermal oxidizer.

88. Respondent shall install, calibrate, and operate a flow meter at the outlet of the thermal oxidizer, prior to any releases to atmosphere, to continuously monitor thermal oxidizer exhaust gas flow rates.

89. Respondent shall install, calibrate, and operate a thermocouple located in, or immediately after, the firebox of the thermal oxidizer to continuously monitor combustion temperature.

90. Respondent shall conduct an initial performance test to establish enforceable continuous parametric monitoring limitations for the operation of the thermal oxidizer, including but not limited to, requirements for combustion temperature, and for exhaust gas flow rate. Such performance test shall include the following requirements:

- a. Respondent must demonstrate compliance with Paragraph 87 using EPA Methods including, but not limited to, 1, 2, 3, 18 or 320, and 25A.
- b. Respondent shall sample at the inlet and outlet of the thermal oxidizer, and prior to any releases to the atmosphere.
- c. Respondent shall conduct a performance test representative of a batch cycle that has the highest potential for emissions of VOC and HAP.
- d. Respondent must conduct a pretest of the thermal oxidizer using Method 25A (and 1, 2, and 3) during processing of an entire representative batch cycle to establish

the representative performance period(s) which must include the period(s) of peak pollutant loading to the thermal oxidizer.

- e. Respondent shall conduct at least 3 separate runs of at least 1 hour duration during the representative performance period(s) of the representative batch cycle.
- f. Respondent shall measure exhaust gas flow rates, and combustion temperature at least every 15 minutes during the entire performance test to determine the operation ranges for each that demonstrate DRE in accordance with Paragraph 87.

91. Respondent shall conduct periodic inspections of the thermal oxidizer, including, but not limited to annual inspection of the burner assemblies, blowers, fans, dampers, refractory lining, oxidizer shell, fuel lines, and duct work.

92. Upon completion of the performance test, if not already included in the permit, Respondent shall submit an application to LDEQ for a permit modification to incorporate the following:

- a. Respondent shall operate in compliance with Paragraphs 86-89 and the operational limits established by the performance test conducted pursuant to Paragraph 90.
- b. Respondent shall conduct periodic performance tests at least every 5 years, consistent with the requirements of Paragraph 90.
- c. Respondent shall conduct periodic inspection of the thermal oxidizer in accordance with Paragraph 91.

Leak Detection and Repair

93. Within 60 days of the effective date of this CAFO, Respondent shall implement an Enhanced Leak Detection and Repair (“LDAR”) Program that meets the requirements of Paragraphs 95-99.

94. Within 45 days of the effective date of this CAFO, Respondent shall develop a written facility wide LDAR Program, or modify its current written LDAR Program, to ensure compliance with all federal, state, and local LDAR regulations applicable to the facility. The LDAR Program shall include, at a minimum:

- a. Identification of all equipment in light liquid and or in gas/vapor service that is subject to periodic monitoring requirements via Method 21 under any applicable federal, state or local LDAR regulation;
- b. procedures for identifying leaking equipment;
- c. procedures for repairing and keeping track of leaking equipment;
- d. a tracking program (e.g., Management of Change) that ensures that new equipment added to the facility for any reason that would impact the LDAR program are integrated into the LDAR program and that equipment that is taken out of service is removed from the LDAR program;
- e. procedures for quality assurance/quality control (“QA/QC”) reviews of all data generated by LDAR monitoring technicians; and
- f. a description of the facility’s LDAR monitoring organization and a designation of the person or position responsible for LDAR management and who has the authority to implement LDAR improvements at the facility, as needed, including the roles and responsibilities of all employee and contractor personnel assigned to

LDAR functions at the facility, and how the number of personnel dedicated to the LDAR functions is sufficient to satisfy the requirements of the LDAR program.

95. Respondents shall use the following internal leak definitions and monitoring frequencies, unless more frequent monitoring is required by permit, or federal, state, or local laws or regulations.

a. For equipment in EtO service, which includes components in contact with a fluid containing at least 0.1 wt% EtO:

- (i) Gas/Light Liquid (“LL”) valves monitored quarterly at 50 ppm leak definition
- (ii) Gas/LL connectors monitored annually at 50 ppm leak definition
- (iii) LL pumps monitored monthly at 250 ppm leak definition

b. For equipment in non-EtO organic HAP service, which includes components in contact with a fluid containing at least 5 wt% total organic HAP:

- (i) Gas/LL valves monitored quarterly at 500 ppm leak definition
- (ii) Gas/LL connectors monitored annually at 500 ppm leak definition
- (iii) LL pumps monitored monthly at 1,000 ppm leak definition

96. Respondent shall perform a first attempt at repair no later than 5 days after detecting a leak.

97. Respondent shall perform a final repair no later than 15 days after detection.

98. For components in EtO service, Delay of Repair is not permissible.

99. For components in non-EtO organic HAP service, equipment may be placed on Delay of Repair.

100. For components in EtO and non-EtO organic HAP service, the following components are exempt from Method 21 requirements: (1) components in vacuum service, and (2) seal-less, canned and magnetic drive pumps.

Certification of Completion

101. At such time as the Respondent believes that it has complied with all terms and conditions of Paragraphs 66-68 (payment of EPA Penalty), that it has achieved compliance with the requirements of Paragraphs 71-100 (Conditions of Settlement), and that it has satisfactorily completed the Supplemental Environmental Project in Section H, Respondent shall certify to EPA completion of these items and provide any necessary documentation. Respondent represents that the signing representative will be fully authorized by Respondent to certify that the terms and conditions of this CAFO have been met. The certification should include the following statement:

“I certify under penalty of law that I have examined and am familiar with the information submitted in this document and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fines and imprisonment.”

102. Any information or correspondence submitted by Respondent to EPA under this CAFO shall be submitted by email to:

Dr. Sarah Frey
U.S. EPA Region 6
Frey.Sarah@epa.gov

Additional Terms of Settlement

103. Respondent agrees that the time period from the Effective Date of this CAFO until all the conditions specified in Paragraphs 71-100 (Conditions of Settlement) and Section H (Supplemental Environmental Project) are completed (the “Tolling Period”) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims set forth in Section F of this CAFO (the “Tolled Claims”). Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

104. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in Paragraph 103 of this CAFO, Respondent must give written notice and a copy of this CAFO to any successors in interest prior to transfer of ownership or control of any portion or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment or delegation, Respondent shall continue to be bound by the obligations or liabilities of this CAFO until EPA has provided written approval.

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

See 40 C.F.R. Part 2, Subpart B (Confidentiality of Business Information).

106. 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 legal capacity to bind the party he or she represents to this CAFO.

107. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each 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.

108. EPA and Respondent agree to the use of electronic signatures for this matter. EPA and Respondent further agree to electronic service of this CAFO by email to the following addresses:

To EPA: RichSteinmetz.Lindsay@epa.gov

To Respondent: jillian.mooney@evonik.com

H. SUPPLEMENTAL ENVIRONMENTAL PROJECT

109. In response to the alleged violations of the CAA and in settlement of this matter, although not required by the CAA or any other federal, state or local law, Respondent agrees to implement a supplemental environmental project (“SEP”), as described below in Paragraph 110.

110. Respondent shall design, install, a vapor recovery system for the Facility’s product truck loading/unloading system, capable of capturing VOCs from the system, which currently vent to the atmosphere, and routing them to the Facility’s new control devices: thermal oxidizer and

flare system. The SEP is more specifically described in Attachment A and incorporated herein by reference.

111. Respondent shall spend no less than \$335,000 on implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report. Respondent shall complete the SEP by December 31, 2026

112. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's *2015 Update to the 1998 Supplemental Environmental Projects Policy*, (March 10, 2015). The SEP advances at least one of the objectives of 112 of the CAA, 42 U.S.C. § 7412 by reducing the potential emissions of VOCs by operating a vapor recovery system during product loading. The SEP is not inconsistent with any provision of 112 of the CAA, 42 U.S.C. § 7412(a). The SEP relates to the alleged violations, and is designed to reduce:

- a. The adverse impact to public health and/or the environment to which the alleged violations contribute, specifically by reducing uncontrolled emissions of HAPs and VOCs released to the atmosphere by routing to new, efficient control devices. This project is estimated to reduce VOCs by approximately 2.6 tons per year; and,
 - b. The overall risk to public health and/or the environment potentially affected by the alleged violations by preventing the release of previously uncontrolled HAP and VOC emissions to the atmosphere by approximately 2.6 tons per year. VOCs are a precursor to pollutants such as ozone.
113. Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP, is at least \$335,000;
- b. That Respondent will not include administrative costs and employee oversight of the implementation of the SEP, in its project costs;
- c. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- d. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;
- e. That Respondent has not received and will not have received credit for the SEP in any other enforcement action;
- f. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- g. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
- h. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 110.

114. Any public statement, oral or written, in print, film, or other media, made by the Respondent making reference to the SEP under this CAFO from the date of its execution of this CAFO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, taken on behalf of the EPA to enforce federal laws."

115. SEP Reports.

- a. The Respondent shall submit a SEP Completion Report to EPA within 60 days of the completion of the SEP. The SEP Completion Report shall contain the following information, with supporting documentation:
 - i. A detailed description of the SEP as implemented;
 - ii. A description of any operating problems encountered and the solutions thereto;
 - iii. Itemized costs;
 - iv. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
 - v. A description of the environmental and/or public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
- b. Periodic Reporting. Respondent shall submit a SEP Status Report to EPA on an annual basis by December 31 each year until the SEP Completion Report has been submitted. The SEP Status Report shall contain the following information, with supporting documentation:

- i. Status and discussion of Respondent's progress in satisfying their obligations in connection with the SEP under Section H and Attachment A, including, at a minimum, a narrative description of activities undertaken, a summary of costs incurred since the previous report, any problems encountered or anticipated in implementing the SEP, together with implemented or proposed solutions;
 - ii. A summary of all permitting activity pertaining to the SEP and the status of any necessary permit applications, as well as a copy of any application for a permit or permit amendment to address or comply with any provision of Section H or Attachment A.
- c. Respondent agrees that failure to submit the SEP Completion Report or any SEP Status Report required by subsections (a) and (b) above shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 117 below.
- d. Respondent shall submit all notices and reports required by this CAFO to:

Dr. Sarah Frey
EPA Region 6
Frey.Sarah@epa.gov
- e. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that

specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

116. EPA acceptance of SEP Completion Report.
 - a. After receipt of the SEP Completion Report described in Paragraph 115 above, EPA will notify the Respondent, in writing, regarding:
 - i. Any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
 - ii. Indicate that EPA concludes that the project has been completed satisfactorily; or
 - iii. Determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 117 herein.
 - b. If EPA elects to exercise option (i) above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondent may object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision

shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO.

117. Stipulated Penalties

- a. Except as provided in subparagraph (b) below, if Respondent fails to satisfactorily complete the requirements regarding the SEP specified in Section H by the deadline in Paragraph 111, Respondent agrees to pay, in addition to the civil penalty in Paragraph 66, the following per day per violation stipulated penalty for each day the Respondent is late meeting the applicable SEP requirement:
 - i. \$25 per day for days 1-60
 - ii. \$100 per day for days 61-90
 - iii. \$250 per day for days 91 and beyond.
- b. If Respondent fails to timely submit any SEP reports, such as those referred to in Paragraph 115, in accordance with the timelines set forth in this CAFO, Respondent agrees to the following per day stipulated penalty for each day after the report was due until Respondent submits the report in its entirety:
 - i. \$25 per day for days 1-60
 - ii. \$100 per day for days 61 – 90
 - iii. \$250 per day for days 91 and beyond.
- c. “Satisfactory completion” of the SEP is defined as Respondent spending no less than \$335,000 to design, install, and operate a vapor recovery system for the Facility product truck loading/unloading system by December 31, 2026. The

determinations of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.

118. EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.

119. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 67 above. Interest and late charges shall be paid as stated in Paragraph 68.

I. EFFECT OF CONSENT AGREEMENT AND FINAL ORDER

120. 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. Except as qualified by Paragraph 67 of this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

121. 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 and facts specifically alleged above.

122. If Respondent fails to timely and satisfactorily complete every condition stated in this CAFO (including payment of any stipulated penalties owed), then Complainant may compel Respondent to perform the conditions, seek civil penalties that accrue from the Effective Date of this CAFO until compliance is achieved, and seek other relief in a civil judicial action pursuant to the Clean Air Act, pursuant to contract law, or both.

123. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

124. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Paragraphs 71 – 100 (Conditions of Settlement) of this CAFO is restitution, remediation, or required to come into compliance with the law.

125. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

126. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of EPA and Respondent, and such modification or amendment being filed with the Regional Hearing Clerk.

127. Any violation of the included Final Order may result in a civil judicial action for an injunction or civil penalties of up to \$117,468 per day of violation, or both, as provided in section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

128. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit. The EPA does not, by its consent to the entry of this CAFO, warrant or aver in any manner that Respondent's compliance with any aspect of this CAFO will result in compliance

with provisions of the Clean Air Act, 42 U.S.C. § 7401, et seq., or with any other provisions of federal, state, or local laws, regulations, or permits.

129. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

J. EFFECTIVE DATE

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

The foregoing Consent Agreement In the Matter of Evonik Corporation, Docket No. 06-2023-3320, is Hereby Stipulated, Agreed, and Approved for Entry.


FOR RESPONDENT:

Date: Apr 4, 2023



Bonnie Tully
President, North America Region
Evonik Corporation
474 West 19th Street
Reserve, LA 70084

FOR COMPLAINANT:



Digitally signed by CHERYL
SEAGER
Date: 2023.04.06 14:07:08
-05'00'

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

CERTIFICATE OF SERVICE

I hereby certify that, on the date in the electronic signature below, an electronic copy of the foregoing Consent Agreement and Final Order was electronically delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and a true and correct copy was delivered to the following individual by the method indicated below:

EMAIL - READ RECEIPT REQUESTED

Jillian K. Mooney
Senior Counsel
Evonik Corporation
2 Turner Place
Piscataway, NJ 08854
jillian.mooney@evonik.com

U.S. EPA, Region 6
Dallas, Texas

ATTACHMENT A
Supplemental Environmental Project (“SEP”)

SEP Description

Respondent’s SEP will route truck loading/unloading emissions that are currently vented to atmosphere to the facility’s new Thermal Oxidizer/Flare system being installed pursuant to the CAFO. Emissions reductions have been estimated to be approximately 2.6 tpy. The project will consist of design and installation of a vapor recovery system for the Facility’s truck loading/unloading system. The truck vent line will be routed to the process knock out pot, which is connected upstream of the Facility’s control device, and balance the truck with inert gas make-up during unloading to ensure proper pressure balance of the unloading/loading systems.

Project Requirements

- a. If deemed necessary by the permitting authority, Respondent shall submit timely and complete applications to the applicable federal, state, or local air permitting authority, and take all other actions necessary, to obtain and pre-construction, construction, and operating permits required to install, construct, and operate components required for this SEP.
- b. Respondent shall keep a record of all invoices of all equipment and services required to complete the SEP.
- c. Respondent shall create and implement standard operating procedures (“SOP”) for the usage and maintenance of the vapor recovery system, including any needed inspections. The SOP shall be reviewed and updated as needed and be provided upon request.

Project Schedule

By no later than December 31, 2026, Respondent shall complete construction and begin operation of the vapor recovery system.

Expenditures

The expenditures for the SEP shall total no less than \$335,000.

Reporting

Respondent shall complete SEP Status Reports and a SEP Completion Report, as specified in Paragraph 115 of the CAFO.