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OCI Beaumont LLC
Docket No. CAA-06-2019-3349

REG. CLERK
EPA REGION VI

**ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS**

IN THE MATTER OF:
OCI Beaumont LLC
Nederland, Texas
Respondent

**CONSENT AGREEMENT
AND FINAL ORDER**

EPA DOCKET NO. CAA-06-2019-3349

CONSENT AGREEMENT

The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 6 ("EPA" or "Complainant") and OCI Beaumont LLC ("Respondent") have agreed to simultaneously commence and 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 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), as amended, is simultaneously commenced and concluded by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3). Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.34.

3. For purposes of this proceeding, Respondent admits only the jurisdictional allegations of this CAFO; however, Respondent neither admits nor denies the specific factual or legal allegations, or the conclusions of law, contained in this CAFO, and this CAFO shall not be used as evidence of any legal or factual admission by Respondent.
4. Respondent waives any right to contest the allegations in the CAFO and waives its right to appeal the Final Order set forth herein.
5. Respondent consents to the issuance of this CAFO and consents to the assessment and payment of the stated federal civil monetary penalty in the amount and by the method set out in this CAFO.
6. Compliance with all the terms and conditions of this CAFO shall resolve Respondent's liability for federal civil monetary penalties for the violations and facts alleged in the CAFO.
7. This CAFO may not be used in any federal or state proceeding except proceedings by EPA to enforce this CAFO.
8. Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this CAFO.
9. Respondent represents the undersigned representative is fully authorized by the Party whom he or she represents to enter-into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind Respondent to the terms and conditions of this CAFO.
10. Respondent agrees the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

II. STATUTORY AND REGULATORY BACKGROUND

11. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), provides in pertinent part:

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

* * * *

(B)(i) [. . .] the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operator of the sources of such releases.

* * * *

(B)(ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection.

12. On June 20, 1996, EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

13. 40 C.F.R. Part 68 provides general requirements applicable to owners or operators of a stationary source subject to Part 68. It also establishes requirements that apply to an owner or operator based on whether the stationary source operates processes subject to one of three "Programs"—Program 1, Program 2, and Program 3.

14. Under 40 C.F.R. § 68.10(a), an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process ("Covered Process"), as determined under 40 C.F.R. § 68.115, shall comply with the requirements of 40 C.F.R. Part 68 no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under Section 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

15. Under 40 C.F.R. § 68.12(a), an owner or operator of a stationary source subject to Part 68 requirements must submit a Risk Management Plan ("RMP") as provided in 40 C.F.R. Part 68 Subpart G (§§ 68.150-68.185) that reflects all covered processes at the stationary source.

16. Under 40 C.F.R. § 68.12(d), the owner or operator of a stationary source with a process subject to the "Program 3" requirements of the Part 68 regulations, as determined pursuant to 40 C.F.R. § 68.10(d), must do the following: develop and implement a management system as provided in 40 C.F.R. § 68.15; conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20-68.42; implement the prevention requirements of 40 C.F.R. §§ 68.65-68.87; develop and implement an emergency response program as provided in 40 C.F.R. §§ 68.90-68.95; and submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in 40 C.F.R. § 68.175.

17. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

18. "Process" is defined in 40 C.F.R. § 68.3 as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such

substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

19. "Covered process" is defined in 40 C.F.R. § 68.3 as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

20. "Regulated substance" is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to Section 112(r)(3) of the CAA as amended, in 40 C.F.R. § 68.130.

21. Risk Management Plan ("RMP") is defined in 40 C.F.R. § 68.3 under subpart G of 40 C.F.R. Part 68.

22. "Stationary source" is defined in Section 112(r)(2)(C) of the CAA and 40 C.F.R. § 68.3 as any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, are under the control of the same person (or persons under common control), and from which an accidental release may occur.

23. "Threshold quantity" is defined in 40 C.F.R. § 68.3 as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA as amended, listed in 40 C.F.R. § 68.130, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

24. "Owner or operator" shall mean any person who owns, leases, operates, controls, or supervises a stationary source.

25. Under Sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA including, but not limited to, a requirement or prohibition of any rule promulgated under the CAA, other than those requirements specified in Sections 113(a)(1),

113(a)(2) or 113(d)(1)(A) of the CAA, 42 U.S.C. §§ 7413(a)(1), (a)(2), or (d)(1)(A), the Administrator may issue an order assessing a civil administrative penalty.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

26. Respondent is a limited liability company authorized to do business in the State of Texas.

27. Respondent is a "person" as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

28. At all times relevant to this CAFO, Respondent owned and operated a chemical manufacturing facility ("Facility") located at 5470 N. Twin City Highway in Nederland, Texas 77627.

29. The Facility operates a chemical manufacturing process (NAICS Code 325199- All Other Basic Organic Chemical Manufacturing).

30. Respondent's RMP lists covered processes subject to Program 3 requirements.

31. The regulated substances held above the threshold quantities identified in 40 C.F.R. § 68.130 include the following: ammonia (anhydrous) and chlorine.

32. As a facility with Program 3 program, Respondent must: develop and implement a management system as provided in 40 C.F.R. § 68.15; conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20–68.42; implement the prevention requirements of 40 C.F.R. §§ 68.65–68.87; develop and implement an emergency response program as provided in 40 C.F.R. §§ 68.90–68.95; and submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in 40 C.F.R. § 68.175.

33. On October 16, 2018 through October 18, 2018, EPA Region 6 conducted an inspection at the Facility pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the

implementing regulations found at 40 C.F.R. Part 68. EPA Region 6 issued an Inspection Report on December 7, 2018, that identified nine Areas of Concern relating to compliance with 40 C.F.R. Part 68, including Sections 68.28(a), 68.30(a), 68.33(a), 68.36(a), 68.69(c), 68.71(b), 68.73(d)(3), 68.75(c), and 68.79(d). On May 8, 2019, EPA Region 6 held a conference call with Facility representatives pursuant to Section 114(a)(2) of the CAA, 42 U.S.C. § 7414(a)(2), to discuss status of the nine identified Areas of Concern. Subsequent information was provided by the Facility on May 8, 2019, and May 9, 2019, respectively, to address the nine identified Areas of Concern statuses.

IV. ALLEGED VIOLATIONS

Count 1. Operating Procedures

34. Complainant hereby restates and incorporates by reference Paragraphs 1 through 33 above.

35. 40 C.F.R. § 68.69(c) requires the owner or operator to review operating procedures as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

36. Respondent could only provide the 2017 annual certification when asked for the previous three years' certifications (2014-2017). Respondent has certified 2018 and will certify 2019 and subsequent certifications moving forward.

37. Complainant alleges that Respondent's failure to annually certify procedures is a violation of 40 C.F.R. § 68.69(c).

Count 2. Training

38. Complainant hereby restates and incorporates by reference Paragraphs 1 through 33 above.

39. 40 C.F.R. § 68.71(b) requires the owner or operator to provide refresher training at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.

40. Complainant alleges that Respondent had not provided the Methanol CCR refresher training at least every three years to one of the four applicable employees based upon training records reviewed at the time of the inspection. The training dates were October 13, 2014, and November 28, 2017.

41. Complainant alleges that Respondent's failure to provide timely refresher training to an employee working in a process is a violation of 40 C.F.R. § 68.71(b).

Count 3. Mechanical Integrity

42. Complainant hereby restates and incorporates by reference Paragraphs 1 through 33 above.

43. 40 C.F.R. § 68.73(d)(3) requires that the frequency of inspections and tests of process equipment be consistent with applicable manufacturers' recommendations and good engineering practices, and that inspections be more frequent if determined to be necessary by prior operating experience.

44. Complainant alleges that Respondent has not ensured the frequency of inspections and tests of process equipment is consistent with applicable manufacturers' recommendations,

good engineering practices, and prior operating experiences. Certain visual inspections are overdue for the ammonia and methanol due to the process area being too hot to inspect. These inspections will be delayed to the next turnaround. At the time of the inspection, Respondent did not have a total number of overdue inspections. Respondent provided a list of past due inspections that were identified by a due date of 9/9/9999. On May 9, 2019, Respondent provided an update to the mechanical integrity inspections and reported five inspections past due to date.

45. Complainant alleges that Respondent's failure to conduct inspections with frequency consistent with good engineering practices as a violation of 40 C.F.R. § 68.73(d)(3).

Count 4. Management of Change

46. Complainant hereby restates and incorporates by reference Paragraphs 1 through 33 above.

47. 40 C.F.R. § 68.75(c) requires the owner or operator for employees involved in operating a process and maintenance and contract employees whose job tasks will be affected by a change in the process shall be informed of, and trained in, the change prior to start-up of the process or affected part of the process.

48. Complainant alleges that prior to 2017, Respondent's system in place was not effectively utilized for informing affected employees/contractors of the change or impact of the change. This was also a 2017 compliance audit finding.

49. Complainant alleges that Respondent's failure to provide a means to assure that employees were informed of and trained in the change prior to the start-up of the process is a violation of 40 C.F.R. § 68.75(c).

Count 5. Compliance Audits

50. Complainant hereby restates and incorporates by reference Paragraphs 1 through 33 above.

51. 40 C.F.R. § 68.79(d) requires the owner or operator to promptly determine and document an appropriate response to each of the findings of the compliance audit and document that deficiencies have been corrected.

52. Respondent had compliance audit findings in the December 2014 audit as well as the November 2017 audit. Complainant alleges that Respondent did not promptly determine and document an appropriate response to each of the findings in the audit nor document that deficiencies has been corrected for each of the findings.

53. Complainant alleges that Respondent's failure to promptly determine and document an appropriate response to each of the findings of the audit and document that deficiencies had been corrected is a violation of 40 C.F.R. § 68.79(d).

V. TERMS OF SETTLEMENT

54. Section 113(d)(1) of CAA, 42 U.S.C. § 7413(d)(1), authorizes the Administrator to assess a penalty up to \$46,192 for each violation of any requirement of Section 112(r) of CAA, 42 U.S.C. § 7412(r).¹

55. Upon consideration of the entire record herein, and upon consideration (in addition to such other factors as justice may require) of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously

¹ As adjusted by the 2018 Civil Monetary Penalty Inflation Adjustment Rule (83 Fed. Reg. 1190), 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$46,192 per day of violation for a violation occurring after November 2, 2015.

assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation, the parties agree that eighty-five thousand dollars (\$85,000.00) is an appropriate penalty to resolve this matter.

56. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the assessed civil 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 three (3) ways: regular U.S. Postal Service mail, to include 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
PO Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service), 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

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Note: Field Tag 4200 of the Fedwire message should read: "D 68010727
Environmental Protection Agency" with phone number (412) 234-4381.

PLEASE NOTE: The docket number CAA 06-2019-3349 shall be clearly typed on the

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

Justin McDowell
Enforcement Officer (GEN-AS)
Chemical Accident Enforcement Section
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

57. 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.

58. 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).

59. EPA will also assess a fifteen-dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30) day period 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(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

60. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order, after the order or assessment has become final, the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621(a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment

penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as the beginning of such quarter.

61. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of any equipment or technology installed by the Respondent in connection with any additional settlement terms undertaken pursuant to this CAFO. Nothing in this CAFO shall be construed to prohibit or prevent the federal, state, or local government from developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required.

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

VI. RETENTION OF ENFORCEMENT RIGHTS

63. EPA does not waive any rights or remedies available to EPA for any violations by Respondent of federal or state laws, regulations, statutes, or permitting programs, except for those matters resolved by this CAFO.

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

65. Nothing in this CAFO 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, or regulated or other extremely hazardous substances at, on, or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit

EPA's civil, injunctive, or 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, regulations, or subparts thereof.

66. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits. The Respondent's compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. Complainant does not warrant or aver in any manner Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of the CAA or with any other provisions of federal, state or local laws, regulations, or permits.

VII. COSTS

67. Each party shall bear its own cost and attorney's fees. Furthermore, the 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.

VIII. TERMINATION

68. This CAFO shall terminate upon Respondent's compliance with all requirements of this CAFO.

OCI Beaumont LLC
Docket No. CAA-06-2019-3349

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


FOR THE RESPONDENT:

Date: 10-10-19


Joey Hagmann
OCI Beaumont LLC

FOR THE COMPLAINANT:

Date: 10-15-19


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

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in 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

10/17/19



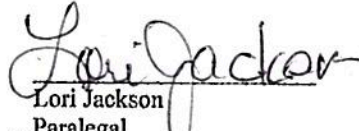
Thomas Rucki
Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of Oct, 2019, 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, 1201 Elm Street, Suite 500, Dallas, Texas 75270, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 70151520000340729873

Laura K. McAfee
Attorney for OCI Beaumont LLP
Beveridge & Diamond
201 North Charles Street, Suite 2210
Baltimore, MD 21201


Lori Jackson
Paralegal
U.S. EPA Region 6, Dallas, Texas