



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

September 10, 2013

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7012 3050 6500 3892

Mr. Osama El-Lissy  
Deputy Administrator  
Plant Protection and Quarantine  
Animal and Plant Health Inspection Service  
Jamie L. Whitten Federal Building, #302-E  
14<sup>th</sup> St. and Independence Ave., S.W.  
Washington, D.C. 20250

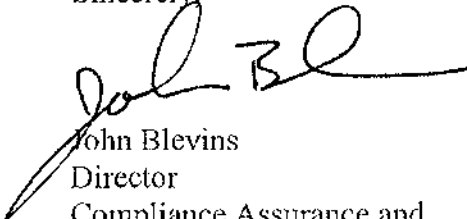
Re: Consent Agreement and Final Order, EPA Docket No. CAA-06-2013-3353  
*In the Matter of the United States Department of Agriculture, Animal and Plant  
Health Inspection Service, Plant Protection Quarantine Facility ( USDA APHIS  
PPQ) located in Edinburg, Texas*

Dear Mr. El-Lissy:

Enclosed is a copy of the Consent Agreement and Final Order (CAFO) filed with the Regional Hearing Clerk in the matter referenced above. As provided in the CAFO, USDA APHIS PPQ is required to pay the civil penalty of Thirty Thousand Dollars (\$30,000) within thirty (30) days from the effective date of the CAFO.

If you have any questions regarding this CAFO, please contact Jacob Gallegos, Assistant Regional Counsel, at (214) 665-9798.

Sincerely



John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
BEFORE THE ADMINISTRATOR

FILED  
2013 SEP 12 AM 9:24  
REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of:	§	
	§	
United States Department of Agriculture	§	
	§	
Respondent	§	
	§	
Animal and Plant Health Inspection Service	§	EPA Docket No.
Plant Protection Quarantine	§	CAA-06-2013-3353
Edinburg, Texas	§	
	§	
Facility	§	
	§	

**CONSENT AGREEMENT AND FINAL ORDER**

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency ("EPA"), Region 6 ("Complainant") and United States Department of Agriculture ("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 is brought by EPA pursuant to sections 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, as amended ("Act" or "CAA"), 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), and 22.34.

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

3. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth herein and request a conference with the Administrator pursuant to 40 C.F.R. Section 22.33(e), and waives all defenses which have been raised or could have been raised to the claims set forth in this CAFO.

4. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which 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 certifies to EPA by its signature herein that a decision was made to build a new delivery system for hydrochloric acid. The new delivery system, designed by a qualified engineer, will be housed inside an acid-resistant utility building. To continue operation, the following interim safety measures have been implemented: all acid pumps, fittings and valves have been replaced; a fire hose has been connected; and the existing delivery system is inspected and maintained on a weekly basis.

## II. ALLEGATIONS

7. Respondent is a federal facility in the State of Texas.

8. Respondent owns and operates the Animal and Plant Health Inspection Service's Plant Protection Quarantine Facility at 22675 North Moorefield Road, Edinburg, Texas 78451 ("Facility").

9. The Respondent processes, handles, or stores hydrochloric acid, which is an extremely hazardous substance.

10. On September 14, 2012, there was an incident at the Facility involving the release of approximately 50 gallons of hydrochloric acid (35 %).

11. According to the incident report, the connector from the hydrochloric acid totc shut-off valve failed, resulting in the release of acid into a spill containment pallet.

12. Pursuant to section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), an owner/operator of a stationary source producing, processing, handling or storing substances listed pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, has a general duty to: (1) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (2) design and maintain a safe facility, taking such steps as are necessary to prevent releases; and (3) minimize the consequences of accidental releases that do occur.

13. Respondent is a “person” as that term is defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e).

14. The Facility is a “stationary source” as that term is defined by section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

15. Respondent is the “owner or operator” as those terms are defined by section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.

16. At the Facility, Respondent processes, handles, or stores substances listed in, or pursuant to, CAA § 112(r)(3) or other extremely hazardous substances identified as such due to toxicity, reactivity, flammability, volatility, or corrosivity.

17. The release of hydrochloric acid at the Facility on September 14, 2012, constituted an “accidental release” as that term is defined by section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

18. Respondent failed to maintain a safe facility by not preventing an accidental release at the Facility for at least a one day violation of the general duty clause of section 112(r)(1) of the CAA, 42 U.S.C. §7412(r)(1).

19. Respondent is therefore subject to the assessment of penalties pursuant to sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B).

### **III. TERMS OF SETTLEMENT**

#### **A. CIVIL PENALTY**

20. Pursuant to the authority granted in sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and taking into consideration the size of the Respondent's facility, the economic impact of the penalty on the Respondent's business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of penalties previously assessed for the same violation (if any), the economic benefit of noncompliance, and the seriousness of the violation, as well as other factors which justice may require, EPA and Respondent agree that an appropriate penalty to settle this matter is \$30,000.

21. Respondent shall pay the assessed penalty within thirty (30) days of the effective date of this CAFO. Respondent shall pay the assessed civil penalty by company, certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA – Region 6." Payment shall be remitted in one of three ways: regular U.S. Postal mail (including certified mail), or U.S. Postal Service express mail - the check 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), the check should be remitted to:

U.S. Bank  
Government Lockbox 979077  
US EPA Fines and 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 No. 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 CAA-06-2013-3353 shall be clearly typed on the check to ensure proper credit.** If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. If payment is made by wire service, the wire transfer instructions shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. The 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:

Samuel Tates  
Chief, Surveillance Section (6EN-AS)  
Compliance Assurance and Enforcement Division  
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 these instructions will ensure that proper credit is given when penalties are received in the Region.

22. Pursuant to 42 U.S.C. 7413(d)(5) 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 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).

23. EPA will also assess a \$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 \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent 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.

## **B. PARTIES BOUND**

24. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

### **C. RETENTION OF ENFORCEMENT RIGHTS**

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

26. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

27. 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, or contaminants at or from the 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.

28. In any subsequent administrative proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate 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-splitting, or other defenses based upon any contention that the claims raised by the



Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to the claims that have been specifically resolved pursuant to this CAFO.

**D. COSTS**

29. 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.

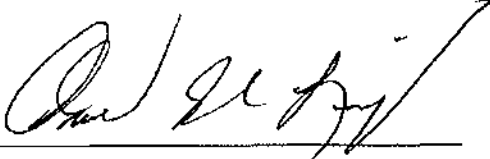
**E. EFFECTIVE DATE**

30. 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:**

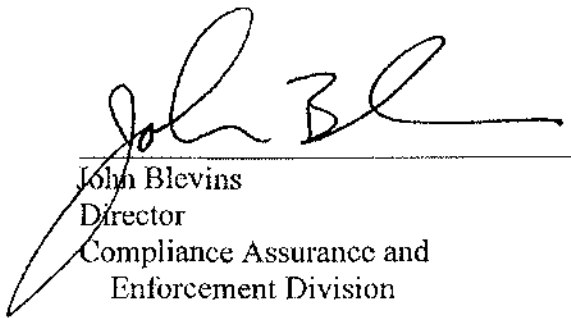
**FOR THE RESPONDENT:**

August 27, 2013  
Date



**FOR THE COMPLAINANT:**

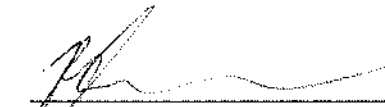
9.10.13  
Date

  
\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

**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 this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 9-12-13

  
\_\_\_\_\_  
Ben J. Harrison  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order (CAFO) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was placed in the United States Mail, to the following by the method indicated:

Osama El-Lissy  
Deputy Administrator  
Plant Protection and Quarantine  
Animal and Plant Health Inspection Service  
Jamie L. Whitten Federal Building, #302-E  
14th St. and Independence Ave., S.W.  
Washington, D.C. 20250

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: # 70123050000165003892

Date: Sep. 12, 2013

Sandra Hardy  
U.S. EPA, Region 6  
Dallas, Texas