

ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2019 FEB 28 AM 10:26
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

Arkema, Inc.

Respondent

Houston, Texas

**CONSENT AGREEMENT AND FINAL
ORDER
EPA DOCKET NO. CAA-06-2019-3306**

CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Arkema Inc., located in Houston, Texas (“Respondent” or “Arkema”), in the above referenced action, have agreed to simultaneously commence and resolve this matter through 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, as amended (“CAA” or “the Act”), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), 22.18(b)(3), and 22.34.

2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A).

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO; however, Respondent neither admits nor denies the specific factual allegations and alleged violations contained in this CAFO.

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

5. Respondent does not waive any rights or defenses which have been raised or could be raised in any subsequent proceeding(s) which has been brought or which could be brought against Respondent regarding the claims set forth in the CAFO. This CAFO may not be used in any federal or state proceeding except proceedings by EPA to enforce this CAFO.

6. Compliance with all the terms and conditions of this CAFO shall resolve Respondent's liability for Federal civil penalties for the violations alleged in the CAFO but shall not resolve Respondent's liability for civil penalties for any other violations.

7. 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.

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. Except as provided in Paragraph 6, nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under Federal, State, or local laws or regulations.

10. Respondent represents that 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 the Respondent to the terms and conditions of this CAFO.

11. Respondent agrees that 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

12. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of regulated substances or other extremely hazardous substances and to minimize the consequences of any such release that does occur.

13. Pursuant to CAA § 112(r)(7), 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate regulations dictating release prevention, detection, and correction requirements.

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

15. Pursuant to 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. § 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.

16. Pursuant to 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. § 68 Subpart G (§§ 68.150-68.185), that reflects all covered processes at the stationary source.

17. 40 C.F.R. § 68 provides general requirements applicable to owners or operators of a stationary source subject to 40 C.F.R. § 68.

18. 40 C.F.R. § 68 also establishes requirements that apply to an owner or operator depending on whether the stationary source operates processes subject to one of three “Programs”—Program 1, Program 2, and Program 3—as these program levels are defined in 40 C.F.R. § 68.10.

19. Pursuant to 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 comply with the chemical accident prevention requirements of 40 C.F.R. § 68, Subpart D (Program 3 Prevention Program, at 40 C.F.R. §§ 68.65-68.87).

20. 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), 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), 7413(a)(2), or 7413(d)(1)(A)], the Administrator may issue an order assessing a civil administrative penalty.

21. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. 7413(d)(1), and as adjusted by the Civil Penalty Inflation Adjustment Rule of January 10, 2018 (83 Fed. Reg. 1190, 1193), 40 C.F.R. § 19.4, the Administrator may assess a civil administrative penalty of up to \$46,192 per day of violation for a violation occurring after November 2, 2015, where penalties are assessed on or after January 15, 2018.

22. EPA and the United States Department of Justice have jointly determined that this matter is appropriate for administrative penalty action though some of the alleged violations occurred more than twelve (12) months prior to the initiation of this administrative action.

23. “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 § 68.115.

24. “Owner or operator” is defined in 40 C.F.R. § 68.3 as any person who owns, leases, operates, controls, or supervises a stationary source.

25. “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.

26. “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. 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.

27. “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 § 68.130.

28. “RMP” is defined in 40 C.F.R. § 68.3 as the risk management plan required under subpart G of 40 C.F.R. § 68.

29. “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, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

30. “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.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

31. Respondent is a corporation authorized to do business in the State of Texas.
32. Respondent is a “person” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).
33. At all times relevant to this CAFO, Respondent owned and operated Arkema, Inc., located at 2231 Haden Road in Houston, Texas (“Facility”).
34. The Facility manufactures mercaptans and sulfides.
35. At the facility, Respondent produces, processes, stores, or handles more than the threshold quantity of toxics, including hydrogen sulfide and carbon disulfide.
36. Hydrogen sulfide is identified at 40 C.F.R. § 68.130 as a regulated toxic substance with a threshold quantity of 10,000 pounds. Carbon disulfide is identified at 40 C.F.R. § 68.130 as a regulated toxic substance with a threshold quantity of 20,000 pounds.
37. Respondent’s facility is a “covered process” as that term is defined in 40 C.F.R. § 68.3.
38. Respondent is required to submit an RMP pursuant to 40 C.F.R. § 68.12(a).
39. Respondent’s RMP indicates that the facility’s processes are subject to OSHA Process Safety Management standard, 29 C.F.R. § 1910.119.
40. Respondent’s facility processes are Program Level 3 covered processes, as that term is defined in 40 C.F.R. § 68.10.
41. Pursuant to 40 C.F.R. § 68.12(d), Respondent is required to implement the prevention requirements of 40 C.F.R. §§ 68.65 - 68.87 at its facility.
42. On October 11-13, 2017, EPA Region 6 personnel conducted an on-site inspection

of Respondent's Facility to determine compliance with CAA 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.

43. The facility failed to document demonstration of understanding for refresher training.

44. The facility failed to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

45. The facility failed to document the date of commencement of incident investigations in the final reports for the incidents.

46. The facility failed to conduct emergency response equipment inspections on three fire extinguishers.

IV. VIOLATIONS

Count 1. Failure to Document Refresher Training

47. Pursuant to 40 C.F.R. § 68.71 the owner or operator shall provide refresher training as often as necessary to each covered employee and shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

48. During the inspection, EPA found that Respondent did not have documentation for four (4) covered employees showing that the employees understood the training.

49. Respondent's failure to adequately document refresher training constitutes a violation of 40 C.F.R. § 68.71.

Count 2. Failure to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

50. Pursuant to 40 C.F.R. § 68.79, owners and operators must perform compliance

audits and promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

51. At the time of the inspection, Respondent had not corrected a deficiency identified in its 2015 compliance audit, though the item was due to be corrected by March 2016.

52. This failure to correct a deficiency identified in a compliance audit constitutes a violation of 40 C.F.R. § 68.79.

Count 3. Incident Investigation Recordkeeping

53. Pursuant to 40 C.F.R. § 68.81(d)(2), an incident investigation report shall include the date the investigation began.

54. During the inspection, EPA found three instances in 2016 and 2017 in which Respondent did not record the date an investigation began.

55. Respondent's failure to record the date an incident investigation began constitutes a violation of 40 C.F.R. § 68.81(d)(2).

Count 4. Emergency Response Equipment Inspections

56. Pursuant to 40 C.F.R. § 68.95, owners and operators must implement procedures for the inspection, testing, and maintenance of emergency response equipment.

57. During EPA's inspection of the facility, EPA found three fire extinguishers whose inspection cards did not indicate up-to-date inspections.

58. Respondent's failure to implement procedures for the inspection, testing, and maintenance of emergency response equipment constitutes a violation of 40 C.F.R. § 68.95.

V. CIVIL PENALTY AND TERMS OF SETTLEMENT

59. Pursuant to the authority granted in Sections 113(d) of the CAA, 42 U.S.C. §

7413(d), and taking into consideration 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 assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, the parties agree that **\$55,000** is an appropriate penalty to resolve this matter.

60. Within thirty (30) days of this fully executed CAFO, Respondent shall pay \$55,000 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: regular U.S. Postal Service mail, to include certified mail; overnight mail; wire transfer; Automated Clearinghouse for receiving U.S. currency; or On-Line Payment. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

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

Contact: Warren Stroman
225-621-1554

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

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

For Automated Clearinghouse (also known as REX or remittance express):

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 On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in search field
Open form and complete required fields.

PLEASE
NOTE:

The docket number "CAA 06-2019-3306" 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:

Samuel Tates
Chief (6EN-AS)
Chemical Accident Enforcement Section
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue Suite 1200
Dallas, Texas 75202-2733;

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

61. 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.

62. 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. 40 C.F.R. § 13.11(b).

63. 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 that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 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.

64. Pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), 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 ten (10%) percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

65. This CAFO shall not relieve the 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.

66. 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

67. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal or State laws, regulations, statutes, or permitting programs.

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

69. 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.

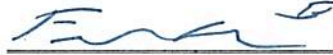
VII. COSTS

70. Each party shall bear its own costs and attorney's fees.

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

FOR THE RESPONDENT:

Date: 5 FEBRUARY 2019



Rick Brown
Houston Plant Manager
Arkema Inc.

FOR THE COMPLAINANT:

Date: 2/27/19




Cheryl T. Seager, 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, including the assessment of civil penalties. In accordance with 40 C.F.R. Part 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

2/28/19




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

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of February, 2019, the original and one 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 a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED and ELECTRONIC COPY

7005 1820 0003 7457 7310


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

Rick Brown
Plant Manager
Arkema, Inc.
2231 Haden Road
Houston, TX 77015

Christopher B. Amandes
Morgan, Lewis & Bockius LLP
1000 Louisiana Street, Suite 4000
Houston, TX 77002
(Attorney for Respondent)