

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**In the Matter of:**

**BASF Corporation  
100 Park Avenue  
Florham Park, NJ 07932**

**Respondent,**

**Erie Facility  
1729 East Avenue  
Erie, PA 16503**

**Facility.**

**EPA Docket No. CAA-03-2019-0043**

**Proceeding under Section 113 of the  
Clean Air Act**

**U.S. EPA-REGION 3-RHC  
FILED-14MAR2019PM3:52**

**CONSENT AGREEMENT**

**A. PRELIMINARY STATEMENT**

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the “Act” or “CAA”), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as codified at 40 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency, Region III (the “EPA”). On the EPA’s behalf, the Director of the Air Protection Division for EPA is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
3. Respondent is BASF Corporation (“BASF”), a Delaware corporation located at 100 Park Avenue, Florham Park, NJ, 07932, and doing business in the state of Pennsylvania.
4. This Consent Agreement and the accompanying Final Order (together referred to as the “CAFO”) address alleged violations by Respondent of requirements found in 40 C.F.R. Part 63, Subpart VVVVVV (“Subpart VVVVVV”), the National Emission Standards for Hazardous Air Pollutants (“NESHAPs”) promulgated under Section 112 of the CAA, 42 U.S.C. § 7412, specifically the NESHAPs for Chemical Manufacturing Area Sources (“CMASs”), as described below.

**B. GENERAL PROVISIONS**

5. Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes the Administrator of EPA to issue an administrative order assessing a civil administrative penalty whenever, on the

basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement, rule, plan, order, waiver, or permit promulgated, issued, or approved under Subchapters I, IV-A, V and VI (also referred to as Titles I, IV-A, V and VI) of the Act. The authority to issue the accompanying Final Order has been duly delegated to the Regional Judicial Officer, EPA Region III.

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO and agrees not to contest EPA's jurisdiction with respect to the issuance, execution, and enforcement of this CAFO.
7. Except as provided in Paragraph 6 above, Respondent neither admits nor denies the specific findings of fact and the conclusions of law set forth in this CAFO.
8. Respondent consents to the issuance of this CAFO and agrees to comply with the terms and conditions set forth herein, including consenting to the payment of a civil penalty as set forth in this CAFO.
9. Respondent agrees to pay its own costs and attorney fees.
10. Respondent agrees that this CAFO shall apply to, and be binding upon, Respondent, its officers, directors, servants, employees, agents, successors, and assigns.
11. Section 113(d)(1) of the CAA limits the Administrator's authority to matters where the first alleged violation occurred no more than twelve (12) months prior to initiation of an administrative action and the total penalty does not exceed \$200,000 (now \$320,000, as adjusted for inflation, *see* 40 C.F.R. § 19.4), except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation or a larger penalty amount is appropriate for an administrative penalty action.
12. The Administrator and the Attorney General, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate and that both a period of violation and a penalty amount greater than those described in Paragraph 11 above are appropriate in this matter.

### **C. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), EPA alleges the following findings of fact and conclusions of law.

13. Respondent is a "person" as defined in Section 302 of the Act, 42 U.S.C. § 7602.
14. Respondent is the "owner or operator" as defined in Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of plants and processes at the chemical manufacturing facility located at 1729 East Avenue, Erie, Pennsylvania 16503 (the "Facility").
15. Respondent has been the owner and operator of the Facility since 2006.

16. The plants and processes that Respondent owns and/or operates at the Facility include “stationary sources” within the meaning of Section 112(a)(3) of the CAA, 42 U.S.C. § 7412(a)(3), and 40 C.F.R. § 63.2.
17. The plants and processes that BASF owns and/or operates at the Facility are an “area source” of hazardous air pollutants (HAPs) within the meaning of Section 112(a)(2) of the CAA, 42 U.S.C. § 7412(a)(2), and 40 C.F.R. § 63.2 because the Facility is a stationary non-major source of HAPs, including acetaldehyde, methanol, methyl isobutyl ketone, hydrazine, manganese, lead compounds, nickel compounds, and chromium compounds.
18. Section 112 of the CAA sets forth a national program for the control of HAPs. 42 U.S.C. § 7412. In 1990, Congress established a list of HAPs believed to cause adverse health or environmental effects, 42 U.S.C. § 7412(b)(1). The CMAS NESHAPs, at 40 C.F.R. §§ 63.11494 – 63.11504, identify fifteen (15) HAPs relevant to CMASs, which are listed in Table 1 to Subpart VVVVVV – eight organic compounds, six metal compounds, and hydrazine.
19. For the purposes of Subpart VVVVVV, a Chemical Manufacturing Process Unit (CMPU) “includes all process vessels, equipment, and activities necessary to operate a chemical manufacturing process that produces a material or a family of materials described by [NAICS] code 325. A CMPU consists of one or more unit operations and any associated recovery devices. A CMPU also includes each storage tank, transfer operation, surge control vessel, and bottoms receiver associated with the production of such NAICS code 325 materials.” 40 C.F.R. § 63.11494(b).
20. The Facility has a CMPU that “is located at an area source of [HAP] emissions” and where Table 1 HAP “are present in the CMPU” – specifically, “[h]ydrazine and/or Table 1 organic HAP other than quinoline are generated as byproduct and are present in the CMPU in any liquid stream (process or waste), continuous process vent, or batch process vent at an individual concentration greater than 0.1 percent by weight,” 40 C.F.R. § 63.11494(a)(iii), or “[h]ydrazine or any Table 1 HAP is produced as a product of the CMPU” 40 C.F.R. § 63.11494(a)(iv).
21. States authorized to implement the CAA can create separate categories of “minor source” within “area source.” Pennsylvania has done so and distinguishes a “true minor source” (aka “natural minor source”) – one that, by design, cannot emit more than 10 tons of any one HAP per year or a combined total of 25 tons of HAPs per year – from a “synthetic minor source,” which stays under those emission limits by implementing various control technologies. The Facility is considered a synthetic minor source.
22. On August 1, 2012, the Pennsylvania Department of Environmental Protection (“PADEP”) issued a state operating permit for the Facility, number 25-00069. PADEP subsequently converted that permit into a Title V State Operating Permit on December 6, 2018.
23. EPA sent Respondent an Information Request pursuant to Section 114 of the Act, 42 U.S.C. § 7414, on March 8, 2016. Respondent responded to that Information Request via letter dated March 25, 2016.

## COUNT 1: FAILURE TO SUBMIT REQUIRED REPORTS

24. Paragraphs 1 through 23 are incorporated by reference as if fully set forth herein.
25. Section 63.11501 of Subpart VVVVVV requires that sources subject to VVVVVV also comply with certain general provisions in Part 63, Subpart A, which are specified in Table 9 of Subpart VVVVVV. One applicable general provision in subpart A requires the owner or operator to submit a Notice of Compliance Status (NOCS) report that contains a “statement by the owner or operator of the affected . . . source as to whether the affected source has complied with the relevant standard or other requirements.” 40 C.F.R. § 63.9(h)(2)(i)(G).
26. Subpart VVVVVV also requires that a NOCS report include certain additional information, such as whether the facility complies with the management practices in 40 C.F.R. § 63.11495, whether it complies with the requirements in 40 C.F.R. § 63.11496 for HAP emissions from process vents, and whether it complies with the requirements in 40 C.F.R. § 63.11499 for heat exchange systems. *See* 40 C.F.R. § 63.11501(b). *See also* Permit, p. 113.
27. As described in Count 2 below, BASF failed to conduct many of the required quarterly inspections at the Facility. BASF reported those failures via its NOCS reports for the Facility.
28. However, Respondent failed to submit required NOCS reports for the Facility for the first half of 2013 and the second half of 2013 identifying missed quarterly inspections in 2013; BASF subsequently reported the missed inspections in its July 2014 NOCS report. *See* BASF’s July 2014 NOCS report, p. 6 (BASF failed “to submit a Semi-annual Notice of Compliance Report for the deviations from the management practice standards of 63.11495(a)(3) quarterly inspections of affected equipment in metal HAP service.”).
29. Respondent’s failure to submit required NOCS reports for the Facility constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412, and the CAA implementing regulations under Subparts A and VVVVVV at 40 C.F.R. §§ 63.9(h) and 63.11501(b).

COUNT 2: FAILURE TO CONDUCT REQUIRED QUARTERLY INSPECTIONS AND  
KEEP RECORDS OF SAME

30. Paragraphs 1 through 29 are incorporated by reference as if fully set forth herein.
31. Subpart VVVVVV requires the owner or operator of a CMPIU subject to that Subpart to “conduct inspections of process vessels and equipment for each CMPIU in organic HAP service or metal HAP service, as specified in paragraphs (a)(3)(i) through (v) of this section, to demonstrate compliance with paragraph (a)(1) of this section and to determine that the process vessels and equipment are sound and free of leaks.” 40 C.F.R. § 63.11495(a)(3).

32. Subpart VVVVVV also requires that: “(i) Inspections must be conducted at least quarterly”; “(ii) For these inspections, detection methods incorporating sight, sound, or smell are acceptable. Indications of a leak identified using such methods constitute a leak unless you demonstrate that the indications of a leak are due to a condition other than loss of HAP. If indications of a leak are determined not to be HAP in one quarterly monitoring period, you must still perform the inspection and demonstration in the next quarterly monitoring period”; “(iv) Inspections must be conducted while the subject CMPU is operating” and “(v) No inspection is required in a calendar quarter during which the subject CMPU does not operate for the entire calendar quarter and is not in organic HAP service or metal HAP service. If the CMPU operates at all during a calendar quarter, an inspection is required.” 40 C.F.R. § 63.11495(a)(3)(i), (ii), (iv), (v).
33. BASF’s July 2014 NOCS report for the Facility states that BASF failed to conduct quarterly Audio Visual Olfactory (AVO) inspections of the CMPUs in metal HAP service as required by 40 C.F.R. § 63.11495. July 2014 NOCS report, pp. 1-2 (“quarterly AVO inspections . . . have not been conducted for the affected CMPU’s since the Initial [NOCS] report submitted May 17, 2013. [BASF] is reporting five (5) deviations for the requirement to conduct quarterly AVO inspections for five (5) consecutive quarters.”). Given the timeframes that the NOCS report covers, these five consecutive quarters are the second, third, and fourth quarters of 2013 and the first and second quarters of 2014.
34. BASF’s January 2015 NOCS report for the Facility states that BASF failed to conduct quarterly AVO inspections “for three quarters in 2013 and three quarters in 2014. Six (6) deviations are being reported for this period.” January 2015 NOCS report, p. 4. BASF also reports that it “[m]issed quarterly inspections for equipment in Metal HAP service 2 deviations.” *Id.*
35. BASF’s July 2015 NOCS report for the Facility states that BASF failed to conduct all quarterly AVO inspections for the affected CMPUs in the first quarter of 2015. July 2015 NOCS report, p. 4.
36. In January and February of 2016, BASF submitted NOCS reports for the Facility (the February report revised and replaced the January report). BASF’s February 2016 NOCS report states that BASF failed to conduct a quarterly AVO inspection for three CMPUs during the third and fourth quarters of 2015. February 2016 NOCS report, pp. 2, 3.
37. BASF’s July 2017 NOCS report for the Facility states that BASF failed to conduct one quarterly AVO inspection for one CMPU during the second quarter of 2017 (for Building A-2/A-5 (Lead Room)). July 2017 NOCS report, p. 3.
38. BASF’s January 2018 NOCS report for the Facility states that BASF failed to conduct a quarterly AVO inspection for two CMPUs during the third quarter of 2017 (for the Copper Chrome and R-7/8 CMPUs). January 2018 NOCS report, p. 3.
39. Subpart VVVVVV requires the owner or operator of a subject facility to “maintain files of all information required by this subpart for at least 5 years following the date of each occurrence according to the requirements in § 63.10(b)(1). If you are subject, you must

comply with the recordkeeping and reporting requirements of § 63.10(b)(2)(iii) and (vi) through (xiv), and the applicable requirements specified in paragraphs (c)(1) through (8) of this section.” 40 C.F.R. § 63.11501(c).

40. 40 C.F.R. § 63.11501(c)(1)(i) requires that “[r]ecords of management practice inspections, repairs, and reasons for any delay of repair, as specified in § 63.11495(a)(5)” be kept for each CMPU subject to this subpart.
41. As described in Paragraphs 33 through 38 above, BASF self-reported that it failed to conduct certain required quarterly inspections of CMPUs subject to Subpart VVVVVV during three quarters of 2013, three quarters of 2014, three quarters of 2015, and two quarters of 2017.
42. According to Respondent’s NOCS reports for the Facility, Respondent failed to keep required records of quarterly inspections; indeed, there were no records of inspections to maintain because the inspections were not conducted. *See* BASF’s July 2014 NOCS report, p. 6 (stating that BASF failed “to keep records associated with the management practice inspections specified in 63.11495(a)(5)”).
43. Respondent’s failures to conduct certain quarterly inspections as required by 40 C.F.R. § 63.11495(a)(3) during eleven quarters from 2013 to 2017, as set forth in paragraphs 33 through 38 above, constitute violations of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart VVVVVV at 40 C.F.R. § 63.11495.
44. Respondent’s failure to keep required records of quarterly inspections constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart VVVVVV at 40 C.F.R. § 63.11501.

### COUNT 3: FAILURE TO CONDUCT REQUIRED WEEKLY INSPECTIONS

45. Paragraphs 1 through 44 are incorporated by reference as if fully set forth herein.
46. Section 63.11496(f)(3) of Subpart VVVVVV sets out the standards and compliance requirements for process vents in metal HAP service. Among other requirements, for a CMPU that has uncontrolled metal HAP process vent emissions equal to or greater than 400 lb/yr, the requirements in Table 4 and § 63.11496(f)(3), (4) or (5) also apply. In this case, 40 C.F.R. § 63.11496(f)(3)(i) requires the owner or operator of such process vents to “prepare a monitoring plan containing the information in paragraphs (f)(3)(i)(A) through (E) of this section” and “operate and maintain the control device according to a site-specific monitoring plan at all times.”
47. BASF uses “differential pressure ranges read on a daily basis to ensure continuous compliance with the process vent requirements for Metal HAP.” July 2015 NOCS report, p. 1. “The control devices in general are baghouses and cartridge filter systems. Operating ranges for pressure drop across the filter system have been established for each baghouse and dust collector controlling metal HAP.” *Id.*, p. 2.

48. Prior to April 2015, BASF assessed these control devices weekly. *See* July 2015 NOCS report, p. 5; Permit, pp. 73, 75, and 78.
49. BASF's July 2014 NOCS report for the Facility states that BASF failed to conduct weekly inspections for the weeks of June 7, 2013; June 14, 2013; and June 21, 2013, as required by the monitoring plan required by 40 C.F.R. § 63.11496(f)(3)(i) and BASF's permit. *See* July 2014 NOCS report.
50. Respondent's failures to conduct required weekly inspections of process vents for the three weeks in June 2013 specified in paragraph 49 above constitute violations of Section 112 of the CAA, 42 U.S.C. § 7412, the CAA implementing regulations under Subpart VVVVVV at 40 C.F.R. § 63.11496(f)(3), and BASF's permit.

COUNT 4: FAILURE TO OPERATE METAL HAP CONTROL DEVICES WITHIN  
OPERATING PARAMETERS

51. Paragraphs 1 through 50 are incorporated by reference as if fully set forth herein.
52. As described in Violation 3 above, section 63.11496(f)(3)(i) of Subpart VVVVVV requires the owner or operator of process units in metal HAP service to "operate and maintain the control device according to a site-specific monitoring plan at all times."
53. As described in Paragraph 47 above, the control devices for the CMPUs in metal HAP service generally are baghouses and dust collectors.
54. Since April 2015, BASF has conducted daily assessments of the differential pressure ranges to ensure that the control devices in metal HAP service are in continuous compliance with the process vent requirements for metal HAP; prior to that time, BASF conducted weekly assessments. *See* July 2015 NOCS report, p. 5.
55. BASF's July 2014 NOCS report for the Facility states that BASF failed to operate its control devices within the specified operating parameters on thirty-six (36) instances between May 22, 2013 and December 31, 2013.
56. The July 2014 NOCS also states that BASF failed to operate its control devices within the specified operating parameters on nineteen (19) instances between January 1, 2014 and June 30, 2014.
57. BASF's January 2015 NOCS report for the Facility states that BASF failed to operate its control devices within the specified operating parameters on thirty (30) instances between July 1, 2014 and December 31, 2014.
58. BASF's July 2015 NOCS report for the Facility states that BASF failed to operate its control devices within the specified operating parameters on one hundred thirty-five (135) instances between January 1, 2015 and June 30, 2015.
59. In January and February of 2016, BASF submitted additional NOCS reports for the Facility (the February report revised and replaced the January report). The February 2016 NOCS

report states that BASF failed to operate its control devices within the specified operating parameters on sixty-nine (69) instances between July 1, 2015 and December 31, 2015.

60. BASF's August 2016 NOCS report for the Facility states that BASF failed to operate its control devices within the specified operating parameters on five (5) instances between January 1, 2016 and June 30, 2016.
61. BASF's January 2017 NOCS report for the Facility states that BASF failed to operate its control devices within the specified operating parameters on two (2) instances between July 1, 2016 and December 31, 2016.
62. BASF's July 2017 NOCS report for the Facility states that BASF failed to operate its control devices within the specified operating parameters on one (1) instance between January 1, 2017 and June 30, 2017.
63. BASF's July 2018 NOCS report for the Facility states that BASF failed to operate its control devices within the specified operating parameters on two (2) instances between January 1, 2018 and June 30, 2018.
64. BASF also reported that it failed to continuously monitor its control devices at the Facility within the specified operating parameters on two (2) instances between July 1, 2018 and December 31, 2018.
65. Respondent's failure to continuously monitor and operate control devices within operating parameters for the periods identified in paragraphs 55 through 64 above between May 22, 2013 and December 31, 2018, constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412, § 63.11496(f)(3)(i) of Subpart VVVVVV, and BASF's permit.

#### COUNT 5: FAILURE TO IMPLEMENT MANAGEMENT PRACTICES FOR SMALL HEAT EXCHANGERS

66. Paragraphs 1 through 65 are incorporated by reference as if fully set forth herein.
67. Subpart VVVVVV sets forth requirements applicable to certain small heat exchange systems. 40 C.F.R. § 63.11495(b).
68. BASF's February 2016 NOCS report states that "[t]he Erie Facility is subject to the heat exchange requirements referenced in 63.11496 for Small Heat Exchange Systems for the chrome-gel process. BASF utilizes the requirements of 63.104(a) in lieu of the requirements of 63.11496(b) for Small Heat Exchange Systems." February 2016 NOCS report, p. 5; see also August 2016 NOCS report, p. 4. BASF's reference to section 63.11496 is likely a typographical error because there are no heat exchange system requirements in section 63.11496.
69. BASF's January 2015 NOCS report states that it failed to implement management practices for small heat exchangers from March 21, 2013 to December 31, 2014. January 2015 NOCS report, p. 7 of document (numbered page 4 at bottom).



70. Respondent's failure to implement management practices for small heat exchangers from March 21, 2013 to December 31, 2014 constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart VVVVVV at 40 C.F.R. § 63.11495.

COUNT 6: FAILURE TO ESTABLISH CONTINUOUS PARAMETRIC MONITORING OF  
PROCESS VENT CONDITIONS

71. Paragraphs 1 through 70 are incorporated by reference as if fully set forth herein.
72. Subpart VVVVVV states that “[t]he provisions in § 63.2450(k)(1) through (6) apply in addition to the requirements for continuous parameter monitoring systems (CPMS) in subpart SS of this part 63, except as specified in paragraphs (g)(4)(i) and (ii) of this section.” 40 C.F.R. § 63.11496(g)(4).
73. BASF's January 2015 NOCS report states that it failed to establish continuous parametric monitoring of process vents conditions, as required by sections 63.11496(g)(4) and 63.2450(k) for organic HAP emissions. January 2015 NOCS report, p. 7 (numbered page 4 at bottom).
74. Respondent's failure to establish continuous parametric monitoring of process vent conditions constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart VVVVVV at 40 C.F.R. §§ 63.11496 and 63.2450.

COUNT 7: FAILURE TO IMPLEMENT REQUIREMENTS FOR MONITORING OF LEAKS  
FROM PROCESS VENTS AND KEEP RECORDS OF SAME

75. Paragraphs 1 through 74 are incorporated by reference as if fully set forth herein.
76. Section 63.11496(a) sets standards and compliance requirements for organic HAP emissions from batch process vents. A facility with a CMPU with uncontrolled organic HAP emissions from all batch process vents equal to or exceeding 10,000 lb/yr must also comply with the emission limits and requirements in Table 2 of subpart VVVVVV. 40 C.F.R. § 63.11496(a).
77. The Facility is an existing source with a CMPU with batch process vents emitting uncontrolled total organic HAP emissions equal to or greater than 10,000 lbs/yr. For such sources, Table 2 provides the option to “Route emissions from batch process vents containing at least 85 percent of the uncontrolled total organic HAP through a closed-vent system to any combination of control devices (except a flare) in accordance with the requirements of [40 C.F.R.] § 63.982(c) and the requirements referenced therein.” See Table 2 to Subpart VVVVVV of Part 63 – Emission Limits and Compliance Requirements for Batch Process Vents. BASF has chosen this option.
78. Section 63.982(c) of Subpart SS, in turn, requires that emissions sent through a closed vent system to a flare comply with, among other things, 40 C.F.R. § 63.983 for closed vent systems.

79. Section 63.983 of Subpart SS sets forth operating, monitoring, and inspection requirements for closed vent systems. 40 C.F.R. § 63.983.
80. Section 63.11496(g) of Subpart VVVVVV states that if a regulated entity is “complying with the emission limits and other requirements for batch process vents in Table 2 to this subpart, the provisions in paragraphs (g)(1) through (8) of this section apply in addition to the provisions in subpart SS.” 40 C.F.R. § 63.11496(g).
81. Subpart SS includes 40 C.F.R. § 63.998, which requires records to be maintained. As described in Paragraphs 77 through 80 above, BASF must comply with the requirements for batch process vents in Table 2 to Subpart VVVVVV, which includes complying with the recordkeeping requirements in 40 C.F.R. § 63.998.
82. BASF’s January 2015 NOCS report states that it failed to implement requirements of 40 C.F.R. § 63.983(b) for monitoring of leaks from process vents, in violation of the process vent requirements for organic HAP emissions. *See* January 2015 NOCS report, p. 7 (numbered page 4 at bottom).
83. BASF’s January 2015 NOCS report also stated that it deviated from the process vent requirements for organic HAP emissions set forth in 40 C.F.R. § 63.11496 because it failed to maintain records required by 40 C.F.R. § 63.998(a)(2)(ii). *See* January 2015 NOCS report, p. 7 (numbered page 4 at bottom).
84. Respondent’s failure to implement requirements for monitoring of leaks from process vents, as set forth in paragraph 80 above, constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart VVVVVV at 40 C.F.R. § 63.11496(a), and Subpart SS at §§ 63.982 and 63.983.
85. Respondent’s failure to maintain records of a design evaluation, as set forth in paragraph 83 above, constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart VVVVVV, § 63.11496, and Subpart SS, § 63.998.

#### COUNT 8: FAILURE TO APPLY FOR A TITLE V PERMIT

86. Paragraphs 1 through 85 are incorporated by reference as if fully set forth herein.
87. Subpart VVVVVV requires the owner or operator of “[a]ny area source that installed a federally-enforceable control device on an affected CMPU . . . to obtain a permit under 40 CFR part 70 or 40 CFR part 71 if the control device on the affected CMPU is necessary to maintain the source’s emissions at area source levels. For new and existing sources subject to this rule on December 21, 2012 and subject to title V as a result of this rule, a complete title V permit application must be submitted no later than December 21, 2013.” 40 C.F.R. § 63.11494(e).
88. In its January 2015 NOCS report, BASF stated that “the operations located at the Erie Facility are subject to the Organic HAP provisions of CMAS. The subject [CMPU] processes the organic HAP acetaldehyde at a concentration greater than 0.1%. Additionally, BASF Corporation has determined that during the calendar year of 2014 it

exceeded the 10,000 pounds/year threshold of uncontrolled organic HAP emissions.” January 2015 NOCS report, pp. 1-2. In that same NOCS report, BASF also stated that at the chrome gel CMPU at the maleic plant, “uncontrolled HAP emissions may exceed 10,000 lb/year, thus requiring control by a minimum of 85%.” *Id.* at p. 5 (numbered 2 at bottom).

89. In its July 2015 NOCS report, BASF reported that it had “determined through an extensive review of the Site records, [that] the Erie Facility, specifically the Chrome-gel process, triggered a need to submit an administratively complete Title V application for those facility operations. The requirement to submit the administratively complete permit application by December 21, 2013 was not met.” July 2015 NOCS report, p. 6; 40 C.F.R. §§ 63.11494(a)(2)(iii), (e).
90. BASF applied for a Title V permit in August 2016.
91. Respondent’s failure to apply for a Title V permit by the December 21, 2013 deadline constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart VVVVVV at 40 C.F.R. § 63.11494(e).

**D. SETTLEMENT RECITATION, SETTLEMENT CONDITIONS, AND CIVIL PENALTY**

92. Complainant and Respondent enter into this Consent Agreement in order to settle the violations specifically set forth in Section C of this Consent Agreement.
93. In settlement of EPA’s claims for civil penalties for the violations alleged above in Section C of this Consent Agreement, Respondent consents to the assessment and agrees to pay a civil penalty in the amount of \$725,000.00, which Respondent shall be liable to pay within the time and manner specified herein.
94. The settlement amount of \$725,000.00 is based upon Complainant’s consideration of, and application of, the statutory penalty factors set forth in Section 113(e) of the Act, 42 U.S.C. § 7413(e), which include 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 as established by any credible evidence, the economic benefit of noncompliance, the payment of penalties previously assessed for the same violation, the seriousness of the violation, and such other matters as justice may require. The settlement amount also considered EPA’s Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991) as indexed for inflation in keeping with 40 C.F.R. Part 19 (Adjustment to Civil Monetary Penalties for Inflation) and applicable EPA memoranda addressing EPA’s Civil Penalty Policies to account for inflation.
95. Respondent shall pay the civil penalty of \$725,000.00 no later than thirty (30) days after receipt of the CAFO in order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO.
96. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to 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, as more fully described below. Accordingly, Respondent's failure to make timely payment shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

97. Receipt by Respondent or Respondent's legal counsel of a fully-executed copy of the CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a). In accordance with 40 C.F.R. § 13.11(a), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that the initial notice is received by Respondent or Respondent's counsel. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate.
98. The cost of EPA'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). Pursuant to Appendix 2 of EPA's Resources Management Directives – Cash Management, Chapter 9, EPA will 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) days the penalty remains unpaid.
99. A late payment penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
100. . If Respondent fails to make a full and complete payment of the penalty by the due date set forth in this CAFO, the entire unpaid balance of the penalty shall become immediately due and owing. Failure by Respondent to pay the civil penalty assessed by the Final Order in full accordance with this CAFO may subject Respondent to a civil collection action to collect the assessed penalty, plus interest and other charges, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to judicial review.
101. Payment of the penalty amount, and any associated interest, administrative fees and late payment penalties owed, shall be made by cashier's check, certified check, electronic wire transfer, Automated Clearing House ("ACH"), or an online, internet payment, as specified below. All payments are payable to "Treasurer, United States of America" and shall reference the above case caption and docket number – CAA-03-2019-0043.
102. Instructions for submitting payment of the penalty using the methods, or combination of methods, described above are provided at the following EPA website addresses:

<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>

<http://www2.epa.gov/financial/makepayment>

103. Any payment made by any method must reference the above case caption and docket number, CAA-03-2019-0043. Within 24 hours of payment of any penalty amount, Respondent shall send copies of any corresponding check, or written notification confirming any electronic transfer through wire transfer, ACH, or online internet payment, to Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and to Robert Stoltzfus, Acting Air Branch Chief (3RC10), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.
104. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in, and any civil penalty amount paid pursuant to this CAFO.
105. This CAFO shall constitute satisfaction of all civil claims for penalties for the specific violations alleged in Section C of this Consent Agreement. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of any federal laws and regulations administered by EPA.
106. Respondent's failure to make timely payment of the civil penalty or any portion of the civil penalty provided herein may result in referral of this matter to the United States Attorney for enforcement of this CAFO in the appropriate United States District Court, in accordance with Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5).

#### **E. RESERVATION OF RIGHTS**

107. This CAFO resolves only the civil penalty claims for the specific violations alleged in Section C of this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nothing in this CAFO shall be construed to limit the United States' authority to pursue criminal sanctions.
108. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c).
109. Nothing in this CAFO shall relieve Respondent of its obligation/duty to comply with all applicable federal, state, and local laws and regulations; nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations; nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit; nor does this CAFO constitute a waiver, suspension, or modification of the requirements of the CAA or any regulations promulgated thereunder.
110. Further, Complainant reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.
111. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information and/or representations made by the Respondent in this matter are false, or in any material respect, inaccurate.

**F. EFFECTIVE DATE**

112. The effective date of this CAFO is the date on which the CAFO is filed with the Regional Hearing Clerk of EPA Region III.

**G. WAIVER OF HEARING**

113. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), with respect to any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the accompanying Final Order.

**H. ENTIRE AGREEMENT**

114. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

**I. EXECUTION**

115. The person signing this Consent Agreement on behalf of Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind Respondent, to the terms and conditions of this CAFO.

**FOR RESPONDENT:**

March 8, 2019

Date



Title TRAVIS ROLLINS  
SITE MANAGER  
BASF-ERIE

**FOR COMPLAINANT:**

3/13/19

Date



Robert Stoltzfus  
Acting Air Branch Chief, Office of Regional Counsel  
U.S. Environmental Protection Agency, Region III

Accordingly, the Air Protection Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of EPA Region III or his designee, the Regional Judicial Officer, ratify this Consent Agreement and issue the accompanying Final Order (CAA-03-2019-0043). The amount of the recommended civil penalty assessment is \$725,000.00.

3/14/19  
Date

  
Cristina Fernandez, Director  
Air Protection Division  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**In the Matter of:**

**BASF Corporation  
100 Park Avenue  
Florham Park, NJ 07932**

**Respondent,**

**Erie Facility  
1729 East Avenue  
Erie, PA 16503**

**Facility.**

**EPA Docket No. CAA-03-2019-0043**

**Proceeding under Section 113 of the  
Clean Air Act**

**U.S. EPA-REGION 3-RHC  
FILED-14MAR2019pm3:52**

**FINAL ORDER**

Complainant, the Director of the Air Protection Division, U.S. Environmental Protection Agency, Region III, and Respondent, BASF Corporation, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

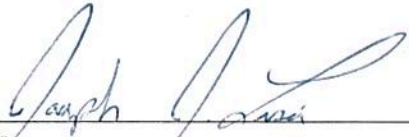
Based on the representation of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's Clean Air Act Stationary Source Civil Penalty Policy (1991) and the statutory factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e).

**NOW, THEREFORE, PURSUANT TO** Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **SEVEN HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS (\$725,000.00)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.



The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

March 14, 2019  
Date

  
\_\_\_\_\_  
Joseph Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA Region III



**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**In the Matter of:**

**BASF Corporation  
100 Park Avenue  
Florham Park, NJ 07932**

**Respondent,**

**Erie Facility  
1729 East Avenue  
Erie, PA 16503**

**Facility.**

**EPA Docket No. CAA-03-2019-0043**

**Proceeding under Section 113 of the  
Clean Air Act**

**CERTIFICATE OF SERVICE**

I certify that on MAR 14 2019, the original and one (1) copy of foregoing ***Consent Agreement and Final Order***, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via ***Certified Mail, Return Receipt Requested, Postage Prepaid***, to:

Laura McAfee  
Beveridge & Diamond, PC  
201 North Charles Street, Suite 2210  
Baltimore, MD 21201-4150  
(Attorney for Respondent)

Copy served via ***Hand Delivery or Inter-Office Mail*** to:

Kelly Gable  
Office of Regional Counsel (3RC20)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(Attorney for Complainant)

Paul Arnold  
Air Protection Division (3AP20)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Dated: MAR 14 2019

Berlin Esposito

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 7004 2510 0004 7903 2442