

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3**

In the Matter of:

Covestro LLC  
1 Covestro Circle  
Pittsburgh, Pennsylvania 15205,

Respondent.

Covestro LLC  
17595 Energy Road  
Proctor, West Virginia 26055

Facility.

Administrative  
Compliance Order on Consent  
EPA Docket No. CAA-03-2020-0022DA

U.S. EPA-REGION 3-RHC  
FILED-11DEC2019AM9:16

**ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT**

**A. PRELIMINARY STATEMENT**

1. This Administrative Compliance Order on Consent (“Order”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 113(a)(3) and (4) of the Clean Air Act (the “Act”), 42 U.S.C. § 7413(a)(3) and (4).
2. On EPA’s behalf, the Director of the Enforcement & Compliance Assurance Division is delegated the authority to issue this Order under Section 113(a) of the Act.
3. Respondent is Covestro LLC, a limited liability company organized in the State of Delaware and doing business in the State of West Virginia. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

4. Respondent neither admits nor denies the allegations set forth in Section C (Findings), stated below, and will not contest EPA's authority or jurisdiction to issue or enforce the provisions of this Order.

## **B. STATUTORY AND REGULATORY BACKGROUND**

5. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the Act, 42 U.S.C. § 7412(r), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3).
6. Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances. The list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.
7. On June 20, 1996, EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68 (the "Risk Management Program Regulations" or "RMP Regulations"), which implements Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). The RMP Regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program. The risk management program is described in a risk management plan that must be submitted to EPA. The risk

management plan must include a hazard assessment to assess the potential effects of an accidental release of any regulated substance, a program for preventing accidental releases of hazardous substances, and a response program providing for specific actions to be taken in response to an accidental release of a regulated substance, so as to protect human health and the environment.

8. Pursuant to Section 112(r)(7)(B)(iii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(iii), and its RMP Regulations at 40 C.F.R. § 68.10(a) and 68.150(a), the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity must submit a risk management plan to EPA no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.
9. Section 112(r)(2)(C) of the Act, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source,” as “any buildings, structures, equipment, installations, or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.”
10. Section 302(e) of the Act, 42 U.S.C. § 7602(e), defines “person” 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.
11. The term “process” is defined at 40 C.F.R. § 68.3 to mean, in relevant part, “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 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.

12. The RMP Regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Act, 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.
13. The RMP Regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA in 40 C.F.R. § 68.130.
14. As used herein, the term “day” shall mean calendar day.
15. All terms not defined herein shall have the meanings set forth in the Act.

### **C. FINDINGS**

16. Respondent owns and operates a polymer manufacturing plant located at 17595 Energy Road in Proctor, Marshall County, West Virginia (“Facility”).
17. As a limited liability company, Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and the owner and operator of the Facility.
18. EPA conducted an inspection of the Facility on March 13, 2019 (“Inspection”) to determine Respondent’s compliance with CAA Section 112(r)(1) and (7) and the RMP Regulations.
19. Respondent’s predecessor submitted an initial risk management plan for the Facility. Several resubmissions and corrections have been made since the original submission, with the latest update submitted to EPA by Respondent in October 2018.

20. At all times relevant to this Order, as stated in Respondent's risk management plan for the Facility, Respondent has handled and handles a maximum of approximately 70,000 pounds of ethylenediamine, 210,000 pounds of ethylene oxide, 400,000 pounds of propylene oxide, and 6,900,000 pounds of toluene diisocyanate at the Facility.
21. Each of the substances, ethylenediamine, ethylene oxide, propylene oxide and toluene diisocyanate, is a regulated toxic substance for purposes of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), because each is listed pursuant to Section 112(r)(3) of the CAA, at 40 C.F.R. § 68.130.
22. The threshold quantity for each of the four regulated toxic substances is 10,000 pounds for ethylene oxide, propylene oxide and toluene diisocyanate and 20,000 pounds for ethylenediamine pursuant to 40 C.F.R. § 68.130, Table 1.
23. More than a threshold quantity of a regulated substance is present in a process at the Facility.
24. The Facility is a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).
25. Respondent has been the owner and operator of a "stationary source" at all times relevant to this Order.
26. Respondent is subject to the requirements of Section 112(r)(7) of the CAA, 40 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68, at the Facility because Respondent is the owner and operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

27. Based on information collected by EPA during the Inspection, EPA determined that Respondent did not comply with the RMP Regulations as set forth in the following paragraphs.
28. The RMP Regulations require the owner or operator of a stationary source to compile written process safety information relevant to the equipment in the process, including process safety information pertaining to design codes and standards, 40 C.F.R. § 68.65(a) and 68.65(d)(1)(vi). The purpose of compiling written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances. This process safety information must include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process. 40 C.F.R. § 68.65(b)-(d).
29. The RMP Regulations require the owner or operator to document that its equipment complies with recognized and generally accepted good engineering practices, 40 C.F.R. § 68.65(d)(2). The term “recognized and generally accepted good engineering practices” includes, among others, the following industry standard: American Society of Mechanical Engineers A13.1-2015, *Scheme for the Identification of Piping Systems* (“ASME A13.1-2015”).
30. The purpose of ASME A13.1-2015 is to establish a system to assist in the identification of hazardous material conveyed in piping systems and their hazards when released in the environment. ASME A13.1-2015 provides that pipes containing hazardous materials must have legends, stating, in relevant part:



This Standard considers a legend to be primary and explicit for identification of contents. Positive identification of the contents of a piping system shall be by lettered legend, giving the name of the contents in full or abbreviated form (see Table 1). Arrows shall be used to indicate direction of flow. Where flow can be in both directions, arrows in both directions shall be displayed. Contents shall be identified by a legend with sufficient additional details such as temperature, pressure, etc., as are necessary to identify the hazard.

... Legends shall be applied close to valves or flanges and adjacent to changes in direction, branches, and where pipes pass through walls or floors; and at intervals on straight pipe runs sufficient for identification. Identification may be accomplished by stenciling, the use of tape, or markers. In any situation, the number and location of identification markers shall be based on the particular piping system.

The applicable [Globally Harmonized System of Classification and Labelling of Chemicals (GHS), published by the United Nations] pictogram as illustrated in Fig. 1 may be included as part of the legend. ...

ASME A13.1-2015, § 3.1.

31. During the Inspection, EPA inspectors observed that the piping leading from the railcar unloading area to the storage tanks, and from the storage tanks to the process reactors, containing ethylenediamine, ethylene oxide, propylene oxide or toluene diisocyanate, was not properly marked and identified. No legends were present to identify the chemical present in the piping, its temperature and pressure, and no arrows were present to identify the direction of flow.
32. Respondent's failure to document that equipment in the process complies with recognized and generally accepted good engineering practices is a violation of Respondent's obligation to comply with 40 C.F.R. § 68.65(d)(2).

#### **D. ORDER**

33. Respondent agrees to undertake the action and provide the information specified below (the “Work”).

- a. Within thirty (30) days of the effective date of this Order, Respondent shall submit to EPA for approval a workplan and schedule (“Workplan and Schedule”) to implement improvements to the Facility to address the conditions described in paragraph 31, above. The identification markings should be made on all of the process piping leading from the railcar unloading area, to the storage tanks, and from the storage tanks to the process reactors, containing ethylenediamine, ethylene oxide, propylene oxide or toluene diisocyanate. The Work shall be consistent with the safety protection provided by the industry standards ASME A13.1-2015 and other applicable industry codes for the Work;
- b. EPA will review the Workplan and Schedule submitted pursuant to subparagraph 33.a, and will either accept it or direct Respondent to make changes and resubmit the document within twenty (20) days;
- c. Within fourteen (14) days of receipt of EPA’s written acceptance of the Workplan and Schedule, submitted pursuant to subparagraph 33.a, Respondent shall initiate implementation of the EPA-accepted Workplan and complete the Workplan in accordance with the EPA-accepted Schedule;
- d. On the one-month anniversary of the Effective Date of this Order, and each thirty (30) days thereafter, Respondent shall submit a written monthly progress report to EPA detailing steps taken during the preceding month to implement the EPA-accepted Workplan in accordance with the EPA-accepted Schedule;



- e. Within thirty (30) days after completing the work in accordance with the EPA-accepted Workplan and Schedule at the Facility, Respondent shall submit to EPA, for EPA's approval, a written report verifying that Respondent has complied with the requirements of subparagraph 33.c at the Facility ("Completion Report"). The Completion Report, with the following certification, shall be signed by a responsible official of Respondent, as such term is defined in paragraph 34, below:

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

- f. EPA will review the Completion Report submitted pursuant to subparagraph 33.e, above, and will either approve it in writing or identify deficiencies in writing ("Notice of Work Deficiencies") and direct Respondent to correct and/or re-perform any or all Work disapproved by EPA and resubmit the report for EPA approval within thirty (30) days of receiving the Notice of Work Deficiencies associated with the Completion Report.

34. Any notice, report, plan, certification, data presentation or other document submitted by Respondent under or pursuant to this Order which discusses, describes, demonstrates or supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement(s) of this Order shall be certified by a responsible official of said Respondent. The term "responsible official" means: (i) the president, secretary or vice-president of the corporation in charge of principal business

function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The responsible official of a partnership or sole proprietorship means the general partners or the proprietor, respectively.

35. Respondent shall provide EPA and its representatives, including contractors and grantees, with access to the Facility for the purpose of assessing Respondent's compliance with this Order and with the Act. Respondent shall also provide EPA and its representatives, including contractors and grantees, with access to all records relating to Respondent's implementation of this Order, and shall comply with all requests for information pertaining to this Order.
36. Respondent shall preserve all documents and information relating to the activities carried out pursuant to this Order for five (5) years after completion of the Work required by this Order. Upon request, Respondent shall provide EPA with copies of such documents and information.
37. All documents submitted by Respondent to EPA in the course of implementing the Order shall be available to the public unless identified as confidential by the Respondent pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to require treatment as confidential business information in accordance with applicable law.

## E. GENERAL PROVISIONS

38. Any violation of this Order may result in a civil administrative or judicial action for an injunction or civil penalties of up to \$47,357 per day per violation, or both, as provided in Sections 113(b)(2) and 113(d)(1) of the Act, 42 U.S.C. §§ 7413(b)(2) and 7413(d)(1), as amended by the Debt Collection Improvement Act, as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.
39. Nothing in this Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act or other federal, state or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable law 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.
40. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
41. Neither EPA nor the United States, by issuance of this Order, assumes any liability for any acts or omissions by Respondent or Respondent's employees, agents, contractors, or consultants engaged to carry out any action or activity pursuant to this Order, nor shall EPA or the United States be held as a party to any contract entered into by Respondent or by Respondent's employees, agents, contractors, or consultants engaged to carry out the requirements of this Order.



42. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Order until the Termination Date as set out in paragraph 54 below, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless EPA has provided written approval of the release of said obligations or liabilities.
43. Unless this Order states otherwise, whenever, under the terms of this Order, written notice or other document is required to be given, it shall be directed to the individuals specified at the addresses below unless those individuals or their successors give notice of a change of address to the other party in writing:

For EPA:

Kevin Daniel, Risk Management Program Coordinator  
Enforcement & Compliance Assurance Division (3ED12)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029  
Phone: (215) 814-3247  
[daniel.kevin@epa.gov](mailto:daniel.kevin@epa.gov)

cc: Cynthia T. Weiss, Senior Assistant Regional Counsel  
Office of Regional Counsel (3RC20)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
Phone: (215) 814-2659  
[weiss.cynthia@epa.gov](mailto:weiss.cynthia@epa.gov)

For Respondent:

Mary Ann Henderson  
Regulatory Affairs HSE&U  
Covestro LLC – New Martinsville  
17595 Energy Road  
Proctor, WV 26055  
Phone: (304) 451-2431  
[maryann.henderson@covestro.com](mailto:maryann.henderson@covestro.com)

and

Nicole Weis  
Compliance Coordinator  
Covestro LLC – New Martinsville  
17595 Energy Road  
Proctor, WV 26055  
Phone: (304) 451-2817  
[nicole.weis@covestro.com](mailto:nicole.weis@covestro.com)

cc: David W. Wagner, Senior Counsel  
Covestro LLC  
1 Covestro Circle  
Pittsburgh, PA 15205  
Phone: (412) 413-3927  
[Dave.wagner@covestro.com](mailto:Dave.wagner@covestro.com)

All notices and submissions shall be considered effective upon receipt.

44. To the extent this Order requires Respondent to submit any information to EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. Part 2, Subpart B. EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. part 2, Subpart B. If Respondent does not assert a confidentiality claim, EPA may make the submitted information available to the public without further notice to Respondent.

45. Each undersigned representative of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Order to execute and bind legally the Parties to this document.

**F. EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE**

46. Pursuant to Section 113(a)(4) of the Act, an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with EPA concerning the alleged violations. By signing this Order, Respondent acknowledges and agrees that it has been provided an opportunity to confer with EPA prior to issuance of this Order.

Accordingly, this Order will take effect upon receipt by Respondent of a fully executed copy of the Order.

47. Any reports, plans, specifications, or other submissions required by this Order are, upon acceptable by EPA, incorporated into this Order. Any non-compliance with such EPA-accepted reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Order.

48. No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules, or other submissions by the Respondent or the requirements of this Order will be construed as relieving the Respondent of its obligations to obtain formal acceptance when required by this Order, and to comply with the requirements of this Order unless formally modified.

49. This Order may be modified or amended in a writing executed by the Director of the Enforcement & Compliance Assurance Division. Such modifications or amendments shall be effective on the date they are fully executed by Respondent and the Director of the Enforcement & Compliance Assurance Division or such other date as set by the



Director of the Enforcement & Compliance Assurance Division. Minor modifications to the Order and/or schedule thereto may be approved by EPA's Risk Management Coordinator, Kevin Daniel.

50. In the event of an inability or anticipated inability on the part of the Respondent to perform any of the actions required by this Order in the time and manner required herein, the Respondent shall notify EPA orally within twenty-four (24) hours of such event (or, if the event occurs on a Friday or Saturday, Sunday, or legal holiday, no later than the following business day) and in writing as soon as possible, but in no event more than three (3) days after such event. Such notice shall set forth the reason(s) for, and the expected duration of, the inability to perform; the actions taken and to be taken by Respondent to avoid and mitigate the impact of such inability to perform; and the proposed schedule for completing such actions. Such notification shall not relieve Respondent of any obligation of this Order. Respondent shall take all reasonable actions to prevent and minimize any delay.
51. Failure by Respondent to carry out any requirement of this Order in accordance with the terms and conditions specified herein may result in the initiation of an enforcement action against Respondent to require Respondent to perform such actions, in addition to any other relief that may be available to EPA pursuant to applicable law. Respondent reserves all rights, claims and defenses to respond to any enforcement by EPA pursuant to this paragraph or under any authority.
52. Nothing in this Section or any other provision of this Order shall be construed to limit any powers EPA may have under the Act or any other law or regulation, nor shall they be construed to limit any defenses that Respondent may have under the Act or otherwise.

## **G. JUDICIAL REVIEW**

53. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1).

## **H. TERMINATION**

54. This Order shall terminate on the earlier of the following (the “Termination Date”):

- a. One year after the Effective Date of this Order;
- b. The effective date of any determination by EPA that Respondent has achieved compliance with all terms of this Order; or
- c. Immediately upon receipt by Respondent of notice from EPA finding that an imminent and substantial endangerment to public health, welfare, or the environment has occurred.

55. Termination of this Order shall not, however, terminate Respondent’s obligation to comply with any continuing obligations of any federal, state or local law, statute, ordinance, rule or regulations, and all continuing obligations shall continue as they did before the termination of the Order.

## **I. COPIES OF ADMINISTRATIVE ORDER**

56. Copies of this Order will be provided to:

Scott Mandirola  
Deputy Secretary for External Affairs  
West Virginia Department of Environmental Protection  
[Scott.G.Mandirola@wv.gov](mailto:Scott.G.Mandirola@wv.gov)

Jesse Adkins,  
Air Quality Division, Compliance and Enforcement  
West Virginia Department of Environmental Protection  
[Jesse.d.adkins@wv.gov](mailto:Jesse.d.adkins@wv.gov)

Michael Todorovich  
Director, WV Division of Homeland Security and Emergency Management  
[Mike.L.Todorovich@wv.gov](mailto:Mike.L.Todorovich@wv.gov)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3

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For United States Environmental Protection Agency Region 3

DEC 10 2019

Date



Karen Melvin, Director  
Enforcement & Compliance Assurance Division

For Respondent, Covestro LLC

Craig A. Graybill  
Signature

12-03-2019  
Date

Printed Name: Craig Graybill

Title: Plant Manager

Address: Covestro LLC – New Martinsville  
17595 Energy Road  
Proctor, WV 26055

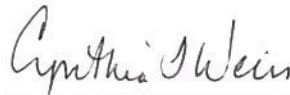
**CERTIFICATION OF SERVICE**

I certify that the foregoing “Administrative Compliance Order on Consent” in the Matter of Covestro LLC, Docket No. CAA-03-2020-0022DA, was filed and a copy of the same were mailed to Covestro LLC as indicated below.

Via Certified Mail:

David Wagner, Esquire  
Senior Counsel, Environmental & Regulatory Affairs  
Law, Intellectual Property & Compliance Department  
Covestro, LLC  
1 Covestro Circle  
Bldg. 4, Office 212  
Pittsburgh, PA 15205

December 11, 2019



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Cynthia T. Weiss  
Senior Assistant Regional Counsel