

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
2019 FEB 12 AM 9:32

**BEFORE THE ADMINISTRATOR**

**In the Matter of:**

Edwards Chemicals, Inc.  
1504 Roseport Road  
Elwood, Kansas 66024,

**Respondent.**

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) **Docket No. CAA-07-2019-0032**  
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**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Edwards Chemicals, Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d).
2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA's intent to issue an order assessing penalties for these violations.

**Parties**

3. Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.
4. Respondent is Edwards Chemicals, Inc., a corporation in good standing under the laws of the state of Kansas doing business in the state of Kansas, which owns and operates the

Edwards Chemicals facility located at 1504 Roseport Road in Elwood, Kansas (Respondent's Facility).

### **Statutory and Regulatory Background**

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of the EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates that the Administrator promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the chemical accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7), 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances.

6. On June 20, 1996, the EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). This rule requires 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.

7. The regulations at 40 C.F.R. Part 68 set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a Risk Management Plan ("RMP") that must be submitted to the EPA.

8. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process 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. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions apply to covered processes. Pursuant to 40 C.F.R. § 68.10(c), a covered process is subject to Program 2 requirements if the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(b) and (d), respectively.

10. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$46,192 for violations that occur after November 2, 2015, and are assessed after January 15, 2018.

### **Definitions**

11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any 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.

12. The regulations at 40 C.F.R. § 68.3 define “stationary source,” in part, 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.

13. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

14. The 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 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.

15. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

### **General Factual Allegations**

16. 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).

17. Respondent is the owner and operator of a facility that is a “stationary source” pursuant to 40 C.F.R. § 68.3.

18. Chlorine is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The threshold quantity for Chlorine, as listed in 40 C.F.R. § 68.130, is 2,500 pounds.

19. On or about January 23-24, 2018, representatives of the EPA conducted an inspection of Respondent’s Facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

20. Information gathered during the EPA inspection revealed that Respondent had greater than 2,500 pounds of chlorine in a process at its facility.

21. From the time Respondent first had onsite greater than 2,500 pounds of chlorine in a process, Respondent was subject to the requirements of Section 112(r) of the CAA,

42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 because it was an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

22. From the time Respondent first had onsite greater than 2,500 pounds of chlorine in a process, Respondent was subject to Program 2 prevention program requirements because pursuant to 40 C.F.R. § 68.10(c), the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(b) and (d), respectively.

23. From the time Respondent first had onsite greater than 2,500 pounds of chlorine in a process, Respondent was required under Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 2 requirements provided at 40 C.F.R. § 68.12(c) and detailed in Subpart C.

### **Allegations of Violation**

24. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

#### **Count 1**

25. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

26. The regulations at 40 C.F.R. §§ 68.36 and 68.39 require that the owner/operator review and update its off-site consequences analysis at least every 5 years; and to maintain documentation relating to its off-site consequences analysis.

27. The EPA inspection revealed that Respondent failed to review and update its off-site consequences analysis at least every 5 years; and to maintain documentation relating to its off-site consequences analysis, as required by the regulations at 40 C.F.R. §§ 68.36 and 68.39.

28. Respondent's failure to review and update its off-site consequences analysis at least every 5 years; and to maintain documentation relating to its off-site consequences analysis, as required by the regulations at 40 C.F.R. §§ 68.36 and 68.39, are violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

#### **Count 2**

29. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

30. The regulation at 40 C.F.R. § 68.12(c)(3) requires the owner or operator of a stationary source with a process subject to Program 2 to implement the Program 2 prevention requirements of 40 C.F.R. §§ 68.48 through 68.60.

31. The EPA inspection revealed that Respondent failed to implement certain Program 2 prevention requirements of 40 C.F.R. §§ 68.48 through 68.60, as required by 40 C.F.R. § 68.12(c)(3). Specifically:

- (a) Respondent failed to compile and maintain up-to-date safety information related to the regulated substances, processes, and equipment as required by 40 C.F.R. §§ 68.48(a)(2-5). Specifically, Respondent failed to compile and maintain up-to-date safety information concerning: the maximum intended inventory of the equipment in which the regulated substances are stored or processed; safe upper and lower temperatures, pressures, flows, and compositions; equipment specifications; and codes and standards used to design, build, and operate the process each of which is required by 40 C.F.R. §§ 68.48(a)(2-5);
- (b) Respondent failed to properly conduct and document the hazard review for the site as required by 40 C.F.R. § 68.50;
- (c) Respondent failed to develop and maintain all required operating procedures that address all the elements required by 40 C.F.R. § 68.52(b), including procedures to address initial startup; temporary operations; emergency shutdown and operations; startup following a normal or emergency shutdown or a major change that requires a hazard review; consequences of deviations and steps required to correct or avoid deviations; and equipment inspections for all processes, each of which is required by 40 C.F.R. § 68.52(b);
- (d) Respondent failed to provide refresher training and employees involved with the covered processes understand and comply with current operating procedures at least every 3 years as required by 40 C.F.R. § 68.54(b);
- (e) Respondent failed to perform compliance audits for Subpart C, did not certify results, and did not have latest 2 audits available as required by 40 C.F.R. § 68.58;

32. Respondent's failures to comply with certain of the Program 2 prevention requirements of 40 C.F.R. §§ 68.48 through 68.60, set forth above, as required by 40 C.F.R. § 68.12(c)(3), violate Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3

33. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

34. The regulations at 40 C.F.R. § 68.150 through 68.195 set forth certain requirements for developing, submitting and maintaining an RMP.

35. The EPA inspection revealed that Respondent failed to meet certain of the requirements set forth in 40 C.F.R. § 68.150 through 68.195 for developing, submitting and maintaining an RMP. Specifically:

- (a) Respondent failed to properly document its status as a non-responding facility in its RMP, as required by 40 C.F.R. § 68.180;

- (b) Respondent failed to address its 5-year accident history in the Executive Summary of its RMP as required by 68.155(d); and
- (c) Respondent failed to review and update the RMP at least every 5 years per 40 C.F.R. § 68.190(b)(1).

36. Respondent's failures to meet the above requirements set forth in 40 C.F.R. §§ 68.150 through 68.195 for developing, submitting and maintaining an RMP, violate Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

### **CONSENT AGREEMENT**

37. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

38. Respondent consents to the issuance of this Consent Agreement and Final Order.

39. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

### **Penalty Payment**

40. EPA has considered the appropriateness of the penalty pursuant to Section 113(e)(1) of the CAA, 42 U.S.C. 7413(e)(1), and has determined that the appropriate penalty for the violations is Seventy-Six Thousand and Eighty-Two Dollars (\$76,082). However, pursuant to the statutory requirement that EPA consider the economic impact of the penalty on Respondent's business, Respondent has demonstrated that it is unable to pay any penalty in this matter.

Because of Respondent's inability to pay the penalty, therefore, Complainant conditionally agrees to resolve the claims alleged herein.

### **Effect of Settlement and Reservation of Rights**

41. This Consent Agreement shall only resolve Respondent's liability for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

42. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

43. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the CAA and its implementing regulations.

44. The execution of this Consent Agreement shall not affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

45. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

### **General Provisions**

46. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

47. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

48. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

**RESPONDENT:**  
**EDWARDS CHEMICALS, INC.**

Date: 12-14-2018

Bettie L Schmetz  
Signature

Bettie L Schmetz  
Name

CEO  
Title



**COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 2/5/19



Mark A. Smith  
Director  
Air and Waste Management Division  
U.S. Environmental Protection Agency, Region 7

Date: 2/5/2019



Raymond C. Bosch  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 7

**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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

Feb. 12, 2019  
Date

**CERTIFICATE OF SERVICE**

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

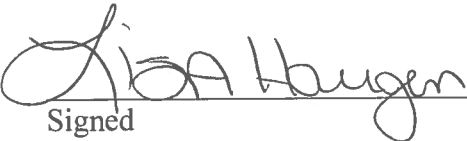
Raymond C. Bosch.

AND

Copy via Certified Mail, Return Receipt Requested to Respondent:

Edwards Chemicals, Inc.  
1504 Roseport Road  
Elwood, Kansas 66024

Dated this 12<sup>th</sup> day of February, 2019.

  
Signed \_\_\_\_\_