



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

Enforcement and Compliance Assurance Division

1201 ELM STREET, SUITE 500  
DALLAS, TEXAS 75270

August 17, 2020

Via E-Mail: [nicole.sullivan@basf.com](mailto:nicole.sullivan@basf.com).

C. Nicole Sullivan  
Assistant General Counsel, Environmental  
BASF Corporation  
100 Park Avenue  
Florham Park, NJ 07932

Re: Consent Agreement and Final Order – BASF Corporation  
Docket No. CAA-06-2020-3302

Dear Ms. Sullivan,

Enclosed is a copy of a fully executed Consent Agreement and Final Order (CAFO) for BASF Corporation (BASF). As provided in the CAFO, BASF will have thirty (30) days from the effective date of the CAFO to pay the civil penalty of \$89,040.

The Environmental Protection Agency acknowledges that the COVID-19 pandemic may impact your business. If that is the case, please contact us regarding any specific issues you need to discuss. If you have any questions, please contact Lawrence Pittman, Assistant Regional at (214) 665-8381, or [pittman.lawrence@epa.gov](mailto:pittman.lawrence@epa.gov), or Marie Stucky at (214) 665-7560 or [stucky.marie@epa.gov](mailto:stucky.marie@epa.gov). Thank you for your cooperation in this matter.

Sincerely,

Digitally signed by CHERYL SEAGER  
DN: c=US, o=U.S. Government, ou=Environmental  
Protection Agency, cn=CHERYL SEAGER,  
0.9.2342.15200300.100.1.1=#68001003651793  
Date: 2020.08.17 13:56:52 -0500

Cheryl Seager, Director  
Enforcement and  
Compliance Assurance Division

Enclosure

cc: Michael De La Cruz, Manager  
Air Enforcement Section  
Enforcement Division, Office of Compliance & Enforcement  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 7811-3087  
[michael.delacruz@tceq.texas.gov](mailto:michael.delacruz@tceq.texas.gov)

FILED

20 AUG 18 PM 3: 01

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY REGIONAL HEARING CLERK  
REGION 6 EPA REGION VI  
DALLAS, TEXAS

IN THE MATTER OF: )

BASF CORPORATION )  
FREEPORT, TEXAS )

RESPONDENT )  
\_\_\_\_\_ )

DOCKET NO. CAA-06-2020-3302

**CONSENT AGREEMENT AND FINAL ORDER**

The Director of the Enforcement and Compliance Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and BASF Corporation (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

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

3. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein.

4. Compliance with all the terms and conditions of this CAFO shall only resolve the

Respondent's liability for Federal civil penalties for those violations and facts which are set forth herein.

5. The Respondent consents to the issuance of the CAFO, to the assessment and payment of the civil penalty in the amount and by the method set forth in this CAFO, and to the conditions specified in the CAFO.

6. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement, to execute it, and to legally bind that party to it.

7. This CAFO shall apply to and be binding upon the Respondent, its officers, directors, servants, employees, agents, authorized representatives, successors and assigns.

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

### **A. PRELIMINARY ALLEGATIONS**

8. BASF Corporation (Respondent) is a Delaware corporation authorized to do business in the State of Texas.

9. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency of the United States and any officer, agent, or employee thereof."

10. The Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

11. The Respondent operates a chemical manufacturing facility located at 602 Copper Road, Freeport, Texas 77541.

12. "Stationary source" is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3 as meaning:

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 Respondent's facility identified in Paragraph 11 is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

14. The Respondent is the owner and/or operator of the stationary source identified in Paragraph 11.

15. The following substances are each a "regulated substance", as set forth in 40 C.F.R. § 68.130:

- A. Formaldehyde (solution);
- B. Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide];
- C. Propylene [1-Propene];
- D. Ammonia (anhydrous);
- E. Trimethylamine [Methanamine, N,N-dimethyl-];
- F. Acrylonitrile [2-Propenenitrile]
- G. Ammonia (conc 20% or greater); and
- H. Hydrogen.

16. "Process" is defined in 40 C.F.R. § 68.3 as meaning

any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of activities. For the purpose 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.

17. The Respondent has the following processes at the stationary source identified in Paragraph 11:

- A. Polymer Dispersion Manufacture;
- B. Oleum (Caprolactam II);
- C. Oleum (Caprolactam I);
- D. Propylene Distribution (Acrylic Monomers);
- E. Propylene Distribution (Oxo Alcohols);

- F. Polyalcohols (Trimethylamine and Formaldehyde);
- G. Ammonia Distribution – Syngas;
- H. Ammonia Distribution – (Hydroxylamine);
- I. Ammonia Distribution – (Caprolactam II);
- J. Ammonia Distribution – Cyclohexanone 2);
- K. Ammonia Distribution – Cyclohexanone 1);
- L. Ammonia Distribution – (Caprolactam I);
- M. Ammonia Distribution - Polyalcohols;
- N. Formaldehyde Railcars;
- O. Ammonia Plant;
- P. Oxo/Syngas;
- Q. Acrylic Monomers – GAA4 Refrigeration System; and
- R. Ammonia Railcars;

18. 40 C.F.R. § 68.130 specifies the following threshold quantities for the regulated substances listed below:

- A. Formaldehyde (solution) – 15,000 pounds;
- B. Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide – 10,000 pounds];
- C. Propylene [1-Propene] – 10,000 pounds;
- D. Ammonia (anhydrous) – 10,000 pounds;
- E. Trimethylamine [Methanamine, N,N-dimethyl-] – 10,000 pounds;
- F. Acrylonitrile [2-Propenenitrile] – 20,000 pounds;
- G. Ammonia (conc 20% or greater) – 20,000 pounds; and
- H. Hydrogen – 10,000 pounds.

19. The Respondent has exceeded the threshold quantity for one or more of the regulated substances listed in Paragraph 15 at each of the processes identified in Paragraphs 17.

20. 40 C.F.R. § 68.130 specifies the following threshold quantities for the flammable regulated substances listed below:

- A. Hydrogen – 10,000 pounds; and
- B. Propylene [1-Propene] – 10,000 pounds.

21. 40 C.F.R. § 68.115(b)(2) provides that if the concentration of a regulated flammable substance is one percent or greater by weight of the mixture, then, for the purposes of determining whether a threshold quantity is present at the stationary source, the entire weight of

the mixture shall be treated as the regulated substance unless the owner or operator can demonstrate that the mixture itself does not have a National Fire Protection Association flammability hazard rating of 4.

22. The concentration of the hydrogen is one percent or greater by weight in a flammable mixture at the Ammonia Plant process.

23. The concentration of propylene [1-propene] is one percent or greater by weight in a flammable mixture at the Oxo/Syngas process.

24. "Covered process" is defined in 40 C.F.R. § 68.3 as meaning "a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115."

25. Each of the processes identified in Paragraph 17 is a "covered process" as that term is defined by 40 C.F.R. § 68.3.

26. The covered processes identified in Paragraphs 17, 22, and 23 are subject to the "Program 3" requirements of the RMP regulations and must, among other things, comply with the Program 3 Prevention Program of 40 C.F.R. Part 68, Subpart D.

27. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d), authorizes EPA to bring an administrative action for penalties that exceed \$378,852<sup>1</sup> and/or the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

---

<sup>1</sup> The maximum penalty that can be assessed (without a waiver) under Section 113 of the Clean Air Act was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$378,852.

28. EPA and the U.S. Department of Justice have jointly determined that the Complainant can administratively assess a civil penalty even though the alleged violations have occurred more than twelve (12) months prior to the initiation of the administrative action.

29. On or about September 11 – 14, 2018, representatives of EPA conducted an inspection of the Respondent's facility.

**B. VIOLATIONS**

**Count One – Failure to Update Process Safety Information**

30. 40 C.F.R. § 68.75(a) provides that the owner or operator shall establish and implement written procedures to manage changes (except for "replacement in kind") to process chemicals, technology, equipment, and procedures, and changes to stationary sources that affect a covered process.

31. 40 C.F.R. § 68.75(d) provides that if a change covered by 40 C.F.R. § 68.75 results in a change in the process safety information required by 40 C.F.R. § 68.65, such information shall be updated accordingly.

32. 40 C.F.R. § 68.65(d)(1)(ii) provides that information pertaining to the equipment in the process includes piping and instrument diagrams (P&ID's).

33. On or about July 24, 2018, the Respondent initiated Management of Change (MOC) 0117-AA-E-18-1413 at the Propylene Distribution Process. The purpose of the MOC was to have recycle gas piped into the piping to T-109. Reactor R-011 was being removed and replaced as part of this MOC. Propylene is consumed in the catalyst bed of R-011.

34. The Propylene Distribution Process is a "covered process" as that term is defined by 40 C.F.R. § 68.3." P&ID No. B1-11340-7711 was required to be updated as part of this MOC.

35. The process was restarted on or about August 6, 2018, at 12 p.m.

36. The Master Stick was not updated to remove the old P&ID No. B1-11340-7711.

37. Therefore, the Respondent violated 40 C.F.R. § 68.75(d).

**Count Two – Failure to Timely Certify Operating Procedures are Current and Accurate**

38. 40 C.F.R. § 68.69(c) provides that the operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

39. The Ammonia Distribution (Hydroxylamine) Process at the facility is a “covered process” as that term is defined by 40 C.F.R. § 68.3.

40. The Respondent certified the operating procedures for the Ammonia Distribution (Hydroxylamine) Process for 2015 on November 18, 2015.

41. The Respondent was required to certify the operating procedures for the Ammonia Distribution (Hydroxylamine) Process for 2016 on or before November 18, 2016.

42. The Respondent certified the operating procedures for the Ammonia Distribution (Hydroxylamine) Process for 2016 on December 13, 2016.

43. The Polyalcohols Process at the at the facility is a “covered process” as that term is defined by 40 C.F.R. § 68.3.

44. The Respondent certified the operating procedures for the NEOL Plant and Incinerator IN-5100 of the Polyalcohols Process for 2016 on March 7, 2016.

45. The Respondent was required to certify the operating procedures for the NEOL Plant and Incinerator IN-5100 of the Polyalcohols Process for 2017 on or before March 7, 2017.



46. The Respondent certified the operating procedures for the NEOL Plant and Incinerator IN-5100 of the Polyalcohols Process for 2017 on August 21, 2017.

47. Therefore, the Respondent violated 40 C.F.R. § 68.69(c) by failing to timely certify certain operating procedures are current and accurate.

**Count Three – Failure to Timely Conduct Refresher Training**

48. 40 C.F.R. § 68.71(a)(1) provides that each employee presently involved in operating a process, and each employee being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in 40 C.F.R. § 68.69.

49. 40 C.F.R. § 68.71(b) provides that refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating the process to assure that the employee understands and adheres to the current operating procedures of the process.

50. 40 C.F.R. § 68.71(c) provides that the owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by this paragraph. The owner or operator 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.

51. The following operators received the following training on the dates indicated below:

Operator	Course	Date Trained	Refresher Training
Operator 2	Syn Gas Operations PSM Refresher Training	03/12/13	06/01/16
	Oxo/Syngas Procedure 3 year Certification	08/14/14	11/18/17
Operator 3	PSM in Hydrox	03/06/15	09/19/18

Operator 4	PSM in Hydrox	03/14/15	10/02/18
	PSM/RMP Training	12/25/14	01/27/18

52. Therefore, the Respondent violated 40 C.F.R. § 68.71(b) and (c) by failing to timely conduct refresher training for three employees.

**Count Four – Failure to Timely Conduct Training Required by Management of Change**

53. 40 C.F.R. § 68.75 provides the following:

(a) The owner or operator shall establish and implement written procedures to manage changes (except for “replacements in kind”) to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process.

(b) The procedures shall assure that the following considerations are addressed prior to any change:

- (1) The technical basis for the proposed change;
- (2) Impact of change on safety and health;
- (3) Modifications to operating procedures;
- (4) Necessary time period for the change; and,
- (5) Authorization requirements for the proposed change.

(c) Employees involved in operating a process and maintenance and contract employees whose job tasks will be affected by a change in the process shall be informed of, and trained in, the change prior to start-up of the process or affected part of the process.

54. On or about March 22, 2018, the Respondent created a MOC for the installation of fire critical insulation for the E-1400, which contains propylene (MOC 0117-AA-EE-18-0578) in Propylene Distribution Process.

55. The Propylene Distribution Process is a “covered process” as that term is defined by 40 C.F.R. § 68.3.

56. Notification of the change was required by MOC 0117-AA-EE-18-0578.

57. The MOC became effective on or about April 20, 2018.

58. Thirteen employees were notified after April 20, 2018.

59. Therefore, the Respondent violated 40 C.F.R. § 68.75(c) by failing to notify employees prior to the startup of E-1400.

**Count Five – Failure to Timely Conduct Training Required by Management of Change**

60. 40 C.F.R. § 68.75 provides the following:

(a) The owner or operator shall establish and implement written procedures to manage changes (except for “replacements in kind”) to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process.

(b) The procedures shall assure that the following considerations are addressed prior to any change:

- (1) The technical basis for the proposed change;
- (2) Impact of change on safety and health;
- (3) Modifications to operating procedures;
- (4) Necessary time period for the change; and,
- (5) Authorization requirements for the proposed change.

(c) Employees involved in operating a process and maintenance and contract employees whose job tasks will be affected by a change in the process shall be informed of, and trained in, the change prior to start-up of the process or affected part of the process.

61. On or about July 27, 2018, the Respondent created a MOC for the review and updating of certain procedures for the Ammonia Plant in the 1600 block (MOC 0117-AMM-18-1429).

62. The Ammonia Plant is a “covered process” as that term is defined by 40 C.F.R. § 68.3.

63. Training was required by MOC 0117-AMM-18-1429.

64. The updated procedures from MOC 0117-AMM-18-1429 were effective on or about July 31, 2018.

65. Five employees were trained after July 31, 2018.

66. Therefore, the Respondent violated 40 C.F.R. § 68.75(c) by failing to train five employees prior to the effective date of MOC 0117-AMM-18-1429.

**Count Six – Inadequate Emergency Response Program**

67. 40 C.F.R. § 68.95(a) provides the following:

(a) The owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment. Such program shall include the following elements:

(1) An emergency response plan, which shall be maintained at the stationary source and contain at least the following elements:

(i) Procedures for informing the public and local emergency response agencies about accidental releases;

(ii) Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; and

(iii) Procedures and measures for emergency response after an accidental release of a regulated substance.

(2) Procedures for the use of emergency response equipment and for its inspection, testing, and maintenance.

68. At the time of the September 11 – 14, 2018 EPA inspection, the Respondent's Emergency Response Plan failed to include the documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures in the Emergency Response Plan.

69. The Respondent failed to conduct the monthly SCBA inspection for the SCBA equipment in the 400 Block for the month of June 2018.

70. The Respondent failed to conduct monthly Fire Hose Box inspections for the Fire Hose Box in the 400 Block for the months of May, June, July, and August 2018.

71. Therefore, the Respondent violated 40 C.F.R. § 68.95(a) by failing to develop and

implement an emergency response plan that included all of the required elements, and by failing to timely inspect certain emergency response equipment, as required by emergency response program.

**III. TERMS OF SETTLEMENT**

**A. CIVIL PENALTY**

72. For the reasons set forth above, the Respondent has agreed to pay a civil penalty of **EIGHTY-NINE THOUSAND FORTY DOLLARS (\$89,040)**.

73. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check should be remitted to:

U.S. Bank  
Government Lockbox 979077  
US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account No. 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" with a phone number of (412) 234-4381".

**PLEASE NOTE: Docket Number CAA-06-2020-3302 shall be clearly typed on the check or other method of payment to ensure proper credit.** If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Marie Stucky  
Enforcement Officer  
Chemical Accident Enforcement Section (ECDAC)  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, TX 75270-2102

Lorena Vaughn  
Regional Hearing Clerk (ORCD)  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, TX 75270

The Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

74. The 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.

75. If the Respondent fails to submit payment within thirty (30) days of the effective date of this CAFO, the Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties as set forth below.

76. 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. *See* 40 C.F.R. § 13.11(b).

77. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

78. Pursuant to Section 113(d)(5) of the CAA, 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, attorneys 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 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

79. This CAFO is considered a "prior violation" for the purpose of demonstrating a "history of noncompliance" under the Clean Air Act Stationary Source Penalty Policy, and the Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (June 2012).

**B. COMPLIANCE**

80. The Respondent hereby certifies that as of the date of the execution of this CAFO, that it has corrected the violations alleged herein, and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r) and 40 C.F.R. Part 68.

**C. MODIFICATION**

81. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and the Respondent, and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

**D. RETENTION OF ENFORCEMENT RIGHTS**



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

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

84. 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, hazardous substances on, at or from the Respondent's facility whether related to the violations addressed in this CAFO or otherwise. Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

85. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. In any such action to enforce the provisions of this CAFO, the Respondent shall not assert, and may not maintain, any defense of laches, statute of limitations, or any other equitable defense based on the passage of time. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under the CAA or its implementing regulations, or under other federal or state laws, regulations, or permit conditions.

86. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, to enforce the provisions of this CAFO, or other appropriate relief relating to this Facility, the Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata,

collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims for civil penalties that have been specifically resolved pursuant to this CAFO.

87. The Respondent waives any right it may possess at law or in equity to challenge the authority of the EPA or the United States to bring a civil action in a United States District Court to compel compliance with this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action. The Respondent also consents to personal jurisdiction in any action to enforce this CAFO in the appropriate Federal District Court.

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

89. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondent's compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of the CAA or with any other Provisions of federal, State, or local laws, regulations, or permits.

**E. SERVICE OF CAFO**

90. The Complainant and Respondent agree to the use of electronic signatures for this matter. The Respondent further agrees to electronic service of this CAFO pursuant to 40 C.F.R.

§ 22.6, by e-mail to the following address:

To the Respondent:

C. Nicole Sullivan  
Assistant General Counsel, Environmental  
BASF Corporation  
100 Park Avenue  
Florham Park, NJ 07932  
nicole.sullivan@basf.com

**F. COSTS**

91. Except as provided in Paragraph 78, each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

**G. EFFECTIVE DATE**

92. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

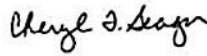
**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**

**FOR THE RESPONDENT:**

Date: 08-11-2020

  
\_\_\_\_\_  
BASF Corporation

**FOR THE COMPLAINANT:**



Digitally signed by CHERYL SEAGER  
DN: cn=US, o=U.S. Government, ou=Environmental  
Protection Agency, cn=CHERYL SEAGER,  
c.9.2342.18200300.100.1.1+60001003651793  
Date: 2020.08.17 13:53:41 -0500

---

**Cheryl T. Seager**  
**Director**  
**Enforcement and**  
**Compliance Assurance Division**  
**EPA – Region 6**

**FINAL ORDER**

Pursuant to the Section 113 of the CAA, 42 U.S.C. § 7413, 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 or EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

**Rucki,  
Thomas**

Thomas Rucki  
Regional Judicial Officer

Digitally signed by Rucki, Thomas  
DN: cn=Rucki, Thomas,  
email=Rucki.Thomas@epa.gov  
Date: 2020.08.18 14:25:35 -05'00'

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Consent Agreement and Final Order (CAFO) was electronically delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy of the CAFO was sent to the following via e-mail:

C. Nicole Sullivan  
Assistant General Counsel, Environmental  
BASF Corporation  
100 Park Avenue  
Florham Park, NJ 07932  
nicole.sullivan@basf.com

Pittman, Lawrence

Digitally signed by Pittman, Lawrence  
DN: cn=Pittman, Lawrence,  
email=Pittman.Lawrence@epa.gov  
Date: 2020.08.19 12:02:34 -05'00'

---

Office of Regional Counsel  
U.S. EPA Region 6, Dallas, Texas