

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2017 AUG 30 AM 9:45
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:

Hexion Inc.
Deer Park, Texas

Respondent

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EPA Docket No.
CAA-06-2017-3327

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Hexion Inc. (“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 sections 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, as amended (“Act” or “CAA”), 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B).

2. This proceeding 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.

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

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

5. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil monetary penalties for those violations and facts alleged in this CAFO.

6. Respondent consents to the issuance of this CAFO and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

II. ALLEGATIONS

7. Respondent is a corporation authorized to do business in the State of Texas.

8. Respondent manufactures resins for sale to downstream companies, which use the resins primarily to create commercial products. Respondent's production activities are located at 5900 Highway 225, Deer Park, Harris County, Texas ("Facility").

9. The Respondent owns and operates the Facility, which includes the manufacture, storage, solidification/flaking, and packaging of bis-phenol acetone (BPA).

10. BPA is made by reacting acetone and phenol to make a liquefied BPA product. Some of the BPA product is solidified and stored in silos in preparation of packaging for shipment to customers.

11. Respondent produces, processes, stores, or handles up to a maximum of 330,000 pounds of flammable pentane, 10,300,000 pounds of toxic epichlorohydrin, and 54,000 pounds of toxic methyl mercaptan at the Facility, according to the facility's Risk Management Plan. Pentane, epichlorohydrin, and methyl mercaptan are identified at 40 C.F.R. Part 68.130 as flammable and toxic regulated substances with threshold quantities of 10,000, 20,000, and 10,000 pounds respectively.

12. On Wednesday, August 31, 2016, Respondent's employees observed and reported a fire at a BPA silo, that damaged the affected silo and surrounding equipment prior to being extinguished.

13. An incident investigation conducted by the Respondent identified the primary suspected causes were that the vacuum in the affected BPA silo was increased by the concurrence of: the dust collection system improvements to reduce personnel exposure during sampling; the BPA flaker remaining in sampling mode for an extended duration; and blinding off obsolete equipment to reduce leaks into the vacuum system.

14. The Respondent also identified that on the day of the incident, the increase vacuum associated with the identified causes overwhelmed the nitrogen sparge providing nitrogen make-up to the silo, resulting in outside air (oxygen) being pulled into the BPA silo over a longer than normal duration.

15. The Respondent determined that the increased oxygen concentration allowed for conditions to initiate the fire, as a BPA pile creates an ignition source from bulk brush discharge.

16. Oxygen alarms sounds as a result of the presence of increased levels of oxygen in the system. Respondent's employees acknowledged the oxygen alarms, but believed the alarms to be typical, and failed to act upon them.

17. Respondent is a "person" as that term is defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e).

18. The Facility consists of certain "stationary sources" as that term is defined by section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

19. Respondent is the "owner or operator" as those terms are defined by section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.

20. At the Facility, Respondent produces, processes, handles, or stores substances listed in, or pursuant to, CAA § 112(r)(3) or other extremely hazardous substances identified as such due to toxicity or flammability.

21. Respondent's operator failed to react and adequately address the oxygen alarm relating to an influx of oxygen into the BPA silo creating a fire hazard. Respondent failed to implement written operating procedures and maintain a safe facility by failing to implement written operating procedures related to operator activities in response to oxygen alarm signals.

22. Respondent's failure constituted a violation of 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

23. Respondent is therefore subject to the assessment of penalties pursuant to sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), for at least one day of violation.

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

24. As adjusted by the 2017 Civil Monetary Penalty Inflation Adjustment Rule (81 Fed. Reg. 43091), 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$45,268 per day of violation for a violation occurring after November 2, 2015 and assessed on or after January 15, 2017.

25. Pursuant to the authority granted in sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and taking into consideration the size of the Respondent's business, the economic impact of the penalty on the Respondent's business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of penalties previously assessed for the same violation (if

any), the economic benefit of noncompliance, and the seriousness of the violation, as well as other factors which justice may require, EPA and Respondent agree that an appropriate penalty to settle this matter is \$36,214.

26. Respondent shall pay the assessed penalty within thirty (30) days of the effective date of this CAFO. 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 ways: regular U.S. Postal mail (including 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), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines and 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"

PLEASE NOTE: Docket number CAA-06-2017-3327 shall be clearly typed on the check 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 the docket number of this CAFO. If payment is made by wire service, the wire transfer instructions shall reference the Respondent's name and address, the case name, and the docket number of this 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:

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

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

Respondent's adherence to these instructions will ensure that proper credit is given when penalties are received in the Region.

27. 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.

28. 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 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).

29. 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.

B. PARTIES BOUND

30. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns.

31. Each party represents that the undersigned representative is fully authorized to enter into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind the parties to the terms and conditions of this CAFO.

C. RETENTION OF ENFORCEMENT RIGHTS

32. 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.

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

34. 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,

or contaminants at or from the Facility. Furthermore, nothing in this CAFO shall be construed 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 federal, state, or local laws or regulations, except for the violations specifically released as a result of this CAFO.

35. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, 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-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 the claims that have been specifically resolved pursuant to this CAFO.

D. COSTS

36. Each party shall bear its own costs and attorney's fees. Furthermore, 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.


E. EFFECTIVE DATE

37. This CAFO becomes 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:

August 24, 2017
Date: _____




Douglas A. Johns
Executive Vice President and General
Counsel, Hexion Inc.

Date:

Marlene Mercado
Deer Park Site Leader, Hexion Inc.

FOR THE COMPLAINANT:

8/28/17
Date _____



Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division
U.S. EPA Region 6

FINAL ORDER

Pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 8/29/17



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

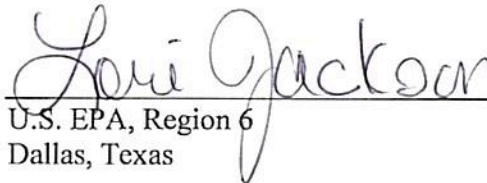
I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order (CAFO) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was placed in the United States Mail, to the following by the method indicated:

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7015 1520000339905943

Ms. Marlene Mercado
Site Leader
Hexion Inc.
P.O. Box 1311
5900 Highway 225 East, Gate 7B
Deer Park, Texas 77536

Date:

8/30/2017



U.S. EPA, Region 6
Dallas, Texas