

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2020-0031
)	
ChemDesign Products Inc.)	Proceeding to Assess a Civil Penalty
Marinette, Wisconsin)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is ChemDesign Products Inc. (“ChemDesign”), a corporation doing business in Wisconsin.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 112 of the Act, 42 U.S.C. § 7412(c), requires the EPA to promulgate a list of all categories and subcategories of new and existing “major sources” of hazardous air pollutants (HAPs), and establish emissions standards for the categories and subcategories. These emission standards are known as the National Emission Standards for Hazardous Air Pollutants (NESHAPs). The EPA codified these standards at 40 C.F.R. Parts 61 and 63.

10. Federal regulations at 40 C.F.R. Part 63, Subpart A, contain the general provisions for the NESHAPs.

11. “Major source” is defined as “any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.” 42 U.S.C. § 7412(a)(1).

12. “Area source” means any stationary source of hazardous air pollutants that is not a major source as defined in this part.” 42 U.S.C. § 7412(a)(2).

13. “Stationary source” is defined as “any building, structure, facility, or installation, which emits or may emit any air pollutant.” 42 U.S.C. § 7411(a)(3).

14. “Hazardous air pollutant” is defined as “any air pollutant listed in or pursuant to” Section 112(b) of the Act. 42 U.S.C. § 7412(a)(6).

15. Section 112(i)(3) of the Act, 42 U.S.C. § 7412(i)(3), prohibits any person subject to a NESHAP from operating a source in violation of a NESHAP after its effective date. 40 C.F.R. §§ 61.05 and 63.4.

16. On October 29, 2009, EPA promulgated the NESHAP for Chemical Manufacturing Area Sources, codified at 40 C.F.R. Part 63, Subpart VVVVVV (“NESHAP VVVVVV”). 74 Fed. Reg. 56008. NESHAP VVVVVV establishes emission standards, requirements to demonstrate initial and continuous compliance with emission limits, operating limits, work practice standards, and recordkeeping requirements associated with chemical manufacturing area sources. 40 C.F.R. § 63.11494.

17. Federal regulations at 40 C.F.R. § 63.11494(a) state, in part, that “you are subject to this subpart if you own or operate a chemical manufacturing process unit (CMPU) that meets the conditions specified in paragraphs (a)(1) and (2) of this section.”

18. The condition specified at 40 C.F.R. § 63.11494(a)(1) states that “[t]he CMPU is located at an area source of hazardous air pollutant (HAP) emissions.”

19. The condition specified at 40 C.F.R. § 63.11494(a)(2) states that the “HAP listed in Table 1 to this subpart (Table 1 HAP) are present in the CMPU, as specified in paragraph (a)(2)(i), (ii), (iii), or (iv) of this section.”

20. Federal regulations at 40 C.F.R. § 63.11494(a)(2)(i) state that “[t]he CMPU uses as feedstock, any material that contains quinoline, manganese, and/or trivalent chromium at an individual concentration greater than 1.0 percent by weight, or any other Table 1 HAP at an individual concentration greater than 0.1 percent by weight.”

21. Table 1 to NESHAP VVVVVV identifies methylene chloride as a HAP used to determine the applicability of NESHAP VVVVVV.

22. Federal regulations at 40 C.F.R. § 63.11502(b) define “chemical manufacturing process,” in part, as “all equipment which collectively functions to produce a product or isolated intermediate. A process includes, but is not limited to any, all, or a combination of reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment which are used to produce a product or isolated intermediate.”

23. Federal regulations at 40 C.F.R. § 63.11494(b) state the following: “A CMPU includes all process vessels, equipment, and activities necessary to operate a chemical manufacturing process that produces a material, or a family of materials described by North American Industry Classification System (NAICS) code 325. A CMPU consists of one or more unit operations and any associated recovery devices. A CMPU also includes each storage tank, transfer operation, surge control vessel, and bottoms receiver associated with the production of such NAICS code 325 materials.”

24. Federal regulations at 40 C.F.R. § 63.11494(d)(1) state, “[a]n affected source is an existing source if you commenced construction or reconstruction of the affected source before October 6, 2008.”

25. Federal regulations at 40 C.F.R. § 63.11494(e) state, “[a]ny area source that installed a federally-enforceable control device on an affected CMPU is required to obtain a permit under 40 CFR part 70 or 40 CFR part 71 if the control device on the affected CMPU is necessary to maintain the source's emissions at area source levels....”

26. Federal regulations at 40 C.F.R. § 63.11494(f) state, “[i]f you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart no later than March 21, 2013.”

27. Federal regulations at 40 C.F.R. § 63.11495(a)(3) state, “[y]ou must conduct inspections of process vessels and equipment for each CMPU in organic HAP service or metal HAP service, as specified in paragraphs (a)(3)(i) through (v) of this section, to demonstrate compliance with paragraph (a)(1) of this section and to determine that the process vessels and equipment are sound and free of leaks. Alternatively, except when the subject CMPU contains metal HAP as particulate, inspections may be conducted while the subject process vessels and equipment are in volatile organic compounds (VOC) service, provided that leaks can be detected when in VOC service.

(i) Inspections must be conducted at least quarterly.

(ii) For these inspections, detection methods incorporating sight, sound, or smell are acceptable. Indications of a leak identified using such methods constitute a leak unless you demonstrate that the indications of a leak are due to a condition other than loss of HAP. If indications of a leak are determined not to be HAP in one quarterly monitoring period, you must still perform the inspection and demonstration in the next quarterly monitoring period.

(iii) As an alternative to conducting inspections, as specified in paragraph (a)(3)(ii) of this section, you may use Method 21 of 40 C.F.R. Part 60, Appendix A-7, with a leak definition of 500 [parts per million by volume] ppmv to detect leaks. You may also use Method 21 with a leak definition of 500 ppmv to determine if indications of a leak identified during an inspection conducted in

accordance with paragraph (a)(3)(ii) of this section are due to a condition other than loss of HAP. The procedures in this paragraph (a)(3)(iii) may not be used as an alternative to the inspection required by paragraph (a)(3)(ii) of this section for process vessels that contain metal HAP as particulate.

(iv) Inspections must be conducted while the subject CMPU is operating.

(v) No inspection is required in a calendar quarter during which the subject CMPU does not operate for the entire calendar quarter and is not in organic HAP service or metal HAP service. If the CMPU operates at all during a calendar quarter, an inspection is required.”

28. Federal regulations at 40 C.F.R. § 63.11495(a)(4) state that “[y]ou must repair any leak within 15 calendar days after detection of the leak, or document the reason for any delay of repair. For the purposes of this paragraph (a)(4), a leak will be considered ‘repaired’ if a condition specified in paragraph (a)(4)(i), (ii), or (iii) of this section is met.”

29. Federal regulations at 40 C.F.R. § 63.11495(a)(5) state that “[y]ou must keep records of the dates and results of each inspection event, the dates of equipment repairs, and, if applicable, the reasons for any delay in repair.”

30. Federal regulations at 40 C.F.R. § 63.11499(a) state that “[i]f the cooling water flow rate in your heat exchange system is equal to or greater than 8,000 [gallons per minute] gal/min and is not meeting one or more of the conditions in § 63.104(a), then you must comply with one of the requirements specified in Table 8 to this subpart.”

31. Table 8 to NESHAP VVVVVV, 1.a., states that for “[e]ach heat exchange system with a cooling water flow rate \geq 8,000 gal/min and not meeting one or more of the conditions in § 63.104(a),” you must comply with “the monitoring requirements in § 63.104(c), the leak repair

requirements in § 63.104(d) and (e), and the recordkeeping and reporting requirements in § 63.104(f).”

32. Federal regulations at 40 C.F.R. § 63.11501(b) provide a list of additional information that must be included in the Notification of Compliance Status.

33. Federal regulations at 40 C.F.R. § 63.11502(b) define equipment as “each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in or associated with a CMPU.”

34. The Administrator of EPA (“Administrator”) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015 and \$48,192 per day of violation up to a total of \$385,535 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

35. Section 113(d)(1) limits the Administrator’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

36. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

37. ChemDesign (“Facility”) owns and operates a chemical manufacturing facility at 2 Stanton Street in Marinette, Wisconsin.

38. ChemDesign operates a “chemical manufacturing process,” as defined at 40 C.F.R. § 63.11502(b), at the Facility to produce a NAICS code 325 material for a duration of one to three months per year.

39. ChemDesign operates a CMPU, as defined in 40 C.F.R. § 63.11494(b), that uses methylene chloride at an individual concentration greater than 0.1 percent by weight.

40. According to the Toxics Release Inventory, the Facility has emitted less than 10 tons per year of any HAP and less than 25 tons per year of any combined HAPs since at least 2013. ChemDesign’s federally enforceable operating Permit No. 438008340-F20 limits its facility-wide emissions of each HAP to less than 9.5 tons for each period of 12 consecutive months, and, of combined HAPs, to less than 24.5 tons for each period of 12 consecutive months.

41. On April 30, 2019, EPA conducted an unannounced CAA investigation of the Facility for compliance with the NESHAP VVVVVV (“2019 Inspection”).

42. During the 2019 Inspection, EPA discovered that the Facility had not complied with the NESHAP VVVVVV and requested that ChemDesign conduct an analysis of applicability and compliance requirements with the NESHAP VVVVVV.

43. On May 8, 2019, ChemDesign submitted to EPA a document titled, “Documentation and Evaluation of Applicability and Compliance Requirements for NESHAP VVVVVV,” which states, among other things, that the Facility will need to implement a leak detection and repair (LDAR) program on process vessels, equipment, and small heat exchange systems associated with the CMPU. The document states that ChemDesign submitted an initial notification on February 25, 2010, but does not include any information on submission of the Notification of Compliance Status.

44. On June 11, 2019, and June 21, 2019, ChemDesign conducted LDAR monitoring in accordance with 40 C.F.R. § 63.11495.

45. From at least May 2013 to May 2019, ChemDesign failed to comply with applicable LDAR monitoring requirements, LDAR requirements, and recordkeeping and reporting requirements, in violation of NESHAP VVVVVV at 40 C.F.R. §§ 63.11495 and 63.11499(a), and Table 8 to NESHAP VVVVVV, 1.a.

46. ChemDesign failed to submit a Notification of Compliance Status, in violation of NESHAP Subpart A at 40 C.F.R. § 63.9(h)(2)(i) and NESHAP VVVVVV at 40 C.F.R. § 63.11501(b).

47. On August 30, 2019, EPA issued to ChemDesign a Finding of Violation (FOV) alleging violations of NESHAP VVVVVV.

48. On September 17, 2019, ChemDesign submitted its Notification of Compliance Status.

49. On September 18, 2019, ChemDesign and EPA met to discuss the FOV.

50. On June 18, 2020 and July 15, 2020, ChemDesign submitted to the Wisconsin Department of Natural Resources, with a copy to EPA, complete applications, amendments and/or supplements to incorporate as “applicable requirements” the following provisions into a Title I, federally-enforceable permit, issued pursuant to a SIP approved construction permit program under Subchapter I of the CAA, to be made permanent:

- a) A requirement to use Method 21, with a leak definition of 500 ppmv, to monitor and detect leaks at equipment associated with a chemical manufacturing process that uses as a feedstock methylene chloride at a concentration greater than 0.1 percent by weight;

- b) A requirement to repair any leak and re-monitor with Method 21 within 15 calendar days after detection of the leak or document the reason for any delay of repair;
- c) A requirement to keep records of the dates and results of each inspection event, the dates of equipment repairs, and, if applicable, the reasons for any delay in repair;
- d) Conditions that limit potential to emit as follows: (i) Facility-wide emissions, including point source and fugitive, of each Federal HAP of not more than 9.5 tons for each period of 12 consecutive months; (ii) Total facility-wide emissions, including point source and fugitive, of all Federal HAPs combined of not more than 24.5 tons for each period of 12 consecutive months; and (iii) Total facility-wide process vent emissions of all HAPs used to determine applicability with the NESHAP VVVVVV of not more than 9,999 pounds for each period of 12 consecutive months. For each limit delineated in subsections (i), (ii), and (iii) of this section, the permit must include methods of demonstrating compliance, and associated monitoring, record keeping, and reporting requirements that make the limit practicably enforceable.
- e) For fugitive sources, emissions must be calculated in accordance with the 1995 Protocol for Equipment Leak Emission Estimates for Fugitive Sources (EPA-453/R-95-017) or any document subsequently identified by EPA as superseding the 1995 Protocol.
- f) For the purpose of determining HAP emissions, a prohibition from taking into account emission reductions from the operation of a control device on an affected CMPU in order to maintain the source's emissions below area source levels.

Civil Penalty

51. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, and the Facility's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$50,000.

52. Within 30 days after the effective date of this CAFO, Respondent must pay a \$50,000 civil penalty by: an on-line payment. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

53. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (ECA-18J)
Air Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

James Morris (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

54. This civil penalty is not deductible for federal tax purposes.

55. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the

collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

56. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States's enforcement expenses, including, but not limited to, attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

57. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: morris.james@epa.gov (for Complainant), and twillis@chemdesign.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

58. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

59. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

60. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 59, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

61. Respondent certifies that it is complying fully with NESHAP VVVVVV.

62. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

63. The terms of this CAFO bind Respondent, its successors and assigns.

64. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

65. Each party agrees to bear its own costs and attorneys’ fees in this action.

66. This CAFO constitutes the entire agreement between the parties.

ChemDesign Products Inc., Respondent

8/20/2020
Date

David J. Mielke
David J. Mielke, President & CEO
ChemDesign Products Inc.

United States Environmental Protection Agency, Complainant

Date

**MICHAEL
HARRIS**

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Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: ChemDesign Products Inc.
Docket No. CAA-05-2020-0031

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

ANN COYLE Digitally signed by ANN
COYLE
Date: 2020.09.04
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Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5