



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202 - 2733

January 25, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7014 0150 0000 2454 9611

Mr. Tracy Rogers  
Magnablend, Inc.  
EH&S Manager  
100 Sterrett Road  
Waxahachic, Texas 75165

Re: Magnablend, Inc., Docket CAA-06-2016-9999

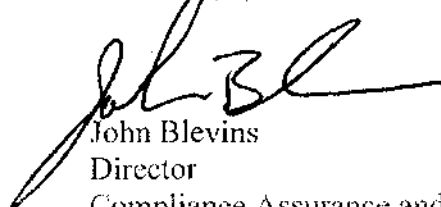
Dear Mr. Rogers:

Enclosed a Consent Agreement and Final Order (CAFO) in the matter referenced above. The CAFO has been signed by EPA and filed with the Regional hearing Clerk.

As provided in the CAFO, Magnablend, Inc., will have thirty (30) days from the effective date of the Order to pay the civil penalty of \$37,500.

If you have any questions regarding this CAFO, please contact Jeffrey Clay, Assistant Regional Counsel, at (214) 665-7297.

Sincerely,



John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
2016 JUN 23 PM 4:30  
EPA REGION 6 OFFICE  
DALLAS, TEXAS

**In the Matter of:**

**Magnablend, Inc.,**

**Respondent**

**CONSENT AGREEMENT AND FINAL ORDER**

**EPA Docket No. CAA-06-2016-9999**

**CONSENT AGREEMENT AND FINAL ORDER**

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency ("EPA"), Region 6 ("Complainant") and Magnablend, 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), 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 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.

3. Respondent explicitly 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.

4. 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.

5. 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

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

7. Respondent owns and operates a chemical blending, manufacturing, and packaging facility located at 100 Sterrett Road, Waxahachie, Texas.

8. Respondent receives bulk raw chemicals, including liquid sodium chlorite, delivered in tanker, railcar, and packaged containers. Respondent uses these raw ingredients to produce finished products.

9. Liquid sodium chlorite is an extremely hazardous substance. It is a corrosive chemical, which can cause severe burns and eye damage. It is also a toxic substance and may be fatal to those who inhale or swallow the substance.

10. Sodium chlorite is a highly reactive substance and will react violently to a variety of other substances.

11. On Monday, January 26, 2015, workers employed by Respondent were unloading sodium chlorite from a tanker truck into totes. Usually sodium chlorite was

unloaded directly from a tanker truck to a receiving tank; however, at this time the tank, which usually held sodium chlorite at the facility, was undergoing maintenance.

12. Respondent did not have a system or other means of ensuring that the totes used to hold sodium chlorite were free of other materials or substances that would react with the sodium chlorite.

13. Workers had completed filling 13 totes of liquid sodium chlorite from the tanker truck. While using a forklift to transport the filled totes to a storage location, an employee noticed that the pressure inside one of the totes had begun to increase – the tote was bulging. The employee inspected the tote and noticed that the tote lid was cracked. He replaced the cracked lid with a new lid, which he hand tightened before going to get a wrench to tighten the new lid completely. By the time he returned, the chemical reaction inside the tote had developed enough pressure to start to off-gas, releasing unknown chemical substances, including sodium chlorite, into the ambient air.

14. As a result of the release, the Respondent began an evacuation and alerted the local fire department.

15. The reaction inside the tote continued, building up enough pressure to rupture and split the tote.

16. The Waxahachie Fire Department issued an evacuation order for a quarter-mile radius around the facility.

17. Pursuant to section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), an owner/operator of a stationary source producing, processing, handling or storing substances listed pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, has a general duty to: (1) identify hazards which may result from accidental releases of such substances using appropriate hazard

assessment techniques; (2) design and maintain a safe facility, taking such steps as are necessary to prevent releases; and (3) minimize the consequences of accidental releases that do occur.

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

19. The Facility 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).

20. 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.

21. 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, reactivity, flammability, volatility, or corrosivity.

22. The release of liquid sodium chlorite at the Facility on January 26, 2015, constituted an “accidental release” as that term is defined by section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

23. Respondent failed to identify chemical hazards at the facility by not ensuring that totes, used in the storage and transportation of sodium chlorite, were in good condition and free of potential contaminants before filling them with a highly reactive extremely hazardous substance.

24. Respondent’s failure constitutes a violation of the general duty clause in section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

### **III. TERMS OF SETTLEMENT**

#### **A. CIVIL PENALTY**

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 \$37,500.

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-06-2016-9999 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, Surveillance 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. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

#### **C. RETENTION OF ENFORCEMENT RIGHTS**



31. EPA does not waive any rights or remedies available to EPA for any violations of law by the Respondent, except with respect to the claims that have been specifically resolved pursuant to this CAFO.

32. 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.

33. 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.

34. 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**

35. 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**

36. This CAFO becomes effective upon filing with the Regional Hearing Clerk.


**In the Matter of:**  
  
**Magnablend, Inc,**  
  
**Respondent**

**CONSENT AGREEMENT AND FINAL ORDER**  
**EPA Docket No. CAA-06-2016-9999**

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


**FOR THE RESPONDENT:**

1.22.16  
Date

  
\_\_\_\_\_  
Magnablend, Inc.  
Univar USA Inc Successor to Magnablend Inc  
by merger  
Stephen Landsman  
General Counsel

**FOR THE COMPLAINANT:**

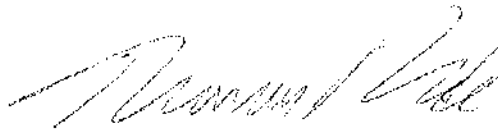
1.22.16  
Date

  
\_\_\_\_\_  
John Blevins  
Director, Compliance Assurance and  
Enforcement Division

**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: 1/25/16



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) were 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:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: # 70140150000024549611

Mr. Eddie Lewis, Esquire  
Norton Rose Fulbright US, LLP  
Fulbright Tower  
1301 McKinney  
Suite 5100  
Houston, TX 77010-3095

Date: 1-25-2016

Sandra Hardy  
U.S. EPA, Region 6  
Dallas, Texas