

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
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REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:)
)
INEOS Nitriles USA LLC) DOCKET NO. CAA-06-2016-3381
PORT LAVACA, TEXAS)
)
RESPONDENT)
_____)

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 INEOS Nitriles USA LLC (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. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A).
3. For the purposes of this proceeding, Respondent admits the jurisdictional allegations contained herein; however, Respondent neither admits nor denies the specific factual allegations or conclusions of law contained in this CAFO.

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

5. Respondent does not waive any rights or defenses, which have been raised or could be raised in any state-law proceeding. This CAFO may not be used in any Federal or state proceeding except proceedings by EPA to enforce this CAFO.

6. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for civil penalties for those violations and facts which are set forth herein.

7. Recognizing the risks and costs of litigation, Respondent and Complainant enter into this agreement to expeditiously resolve this matter.

8. 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 the conditions specified in the CAFO.

9. Each undersigned representative of the parties to this agreement represents 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.

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

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

11. Respondent is a Delaware Limited Liability Company authorized to do business in the State of Texas.

12. "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."

13. Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

14. Respondent owns and operates a chemical manufacturing facility located at 13050 Texas Highway 185, Port Lavaca, Texas.

15. "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.

16. Respondent's facility identified in Paragraph 14 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.

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

18. Butane, Chlorine, Acrylonitrile, Hydrocyanic acid, Sulfur dioxide, Ammonia, and flammable mixtures are each a "regulated substance", as set forth in 40 C.F.R. § 68.130.

19. "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.

20. Respondent has an Acrylonitrile Manufacturing process at the stationary source identified in Paragraph 14.

21. 40 C.F.R. § 68.130 specifies the following threshold quantities for the regulated substances listed below:

- A. Butane -- 10,000 pounds;
- B. Chlorine -- 2,500 pounds;
- C. Acrylonitrile -- 20,000 pounds;
- D. Hydrocyanic Acid -- 10,000 pounds;
- E. Sulfur Dioxide (anhydrous) -- 5,000 pounds;
- F. Ammonia (anhydrous) -- 10,000 pounds; and
- G. Flammable Mixture -- 10,000 pounds

22. Respondent has exceeded the threshold quantity for the regulated substances in Paragraph 21 at the process identified in Paragraph 20:

23. "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."

24. The process identified in Paragraphs 20 and 22 is a "covered process" as that term is defined by 40 C.F.R. § 68.3.

25. The covered process identified in Paragraphs 20, 22, and 24 is subject to the "Program 3" requirements of the Risk Management Program (RMP) regulations and must, among other things, comply with the Program 3 Prevention Program of 40 C.F.R. Part 68, Subpart D.

26. On or about December 1-3, 2015, an EPA inspector conducted an inspection of Respondent's facility.

B. VIOLATIONS

Count One – Failure to Develop and Implement Safe Work Practices

27. 40 C.F.R. § 68.69(d) provides that the owner or operator shall develop and implement safe work practices to provide for the control of hazards during operations such as lockout/tagout; confined space entry; opening process equipment or piping; and control over entrance into a stationary source by maintenance, contractor, laboratory, or other support personnel.

28. A contractor was removing a six-inch blind and installing four-inch and three-quarters inch blinds to prepare the Heads Column in the Acrylonitrile Unit for caustic cleaning.

29. The contractor controlled the method and manner for removing and replacing the blinds. The contractor opened and removed the six-inch flange blank, inserted gaskets, closed the flange, and tightened the bolts. He opened and installed the four-inch flange blank, inserted gaskets, closed the flange, and tightened the bolts.

30. During this work, the contractor was unexpectedly exposed to elevated concentrations of hydrogen cyanide that seeped through an "unseated" gate valve on the four-inch line. The gate valve appeared to be fully closed and was confirmed to be locked with a chain.

31. After the incident, the gate valve was inspected. The inspection revealed a small piece of debris on the seat ledge on the bottom side of the gate valve. Unit personnel were unaware of the debris, and the debris did not prevent the gate valve from appearing to be fully closed.

32. The presence of the debris prevented the valve from fully "seating" and allowed some hydrogen cyanide to seep through the valve.

33. Therefore, Respondent violated 40 CFR 68.69(d) by failing to fully recognize potentially hazardous concentrations of hazardous chemicals in process piping and thus develop and implement safe work practices.

Count Two – Failure to Maintain Offsite Consequence Analysis Documentation

34. 40 C.F.R. § 68.38(e) provides that the owner or operator shall maintain documentation of data used to estimate population and environmental receptors potentially affected.

35. During the inspection on or about December 1-3 2015, the inspector requested the documentation for the offsite consequences analysis the facility is required to maintain.

36. During the review, the inspector did not find documentation of the environmental receptors potentially affected by Respondent's worst case toxic release.

37. Therefore, Respondent violated 40 C.F.R. § 68.38(e) by failing to maintain documentation of data used to estimate population and environmental receptors potentially affected.

Count Three – Failure to List Beginning Date of Investigation in Incident Report

38. 40 C.F.R. 68.60 requires the owner or operator of a covered facility to investigate each incident that does or could reasonably result in a catastrophic release.

39. At the conclusion of the investigation a summary must be prepared and must include the date the investigation began.

40. During the review, the inspector found that the date the investigation began was not listed in the report concerning the June 10, 2015, incident.

41. Therefore, Respondent violated 40 C.F.R. § 68.60(c) by failing to list the date the incident investigation began.

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

42. For the reasons set forth above, Respondent has agreed to pay a civil penalty of **One Hundred Seventy Four Thousand Two Hundred Fifty Dollars (\$174,250)**.

43. 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 (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-06-2016-3381 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 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 Respondent's name and address, the case name, and docket number of the CAFO. 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
Environmental Scientist (6EN-AS)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202

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 this request will ensure proper credit is given when penalties are received in the Region.

44. 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.

45. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, 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.

46. 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).

47. 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.

48. 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, attorney's 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.

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

B. NOTIFICATION

50. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other party that another individual has been designated to receive the communication:

Complainant:

Marie Stucky
U.S. Environmental Protection Agency Region 6
1445 Ross Avenue (6EN-AS)
Dallas, Texas 75202
(214) 665-7560

Respondent:

INEOS Nitriles USA LLC
Attn: Charles Saunders, General Counsel & Secretary
2600 South Shore Blvd., Suite 500
League City, Texas 77573

C. COMPLIANCE

51. 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.

D. MODIFICATION

52. 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 Respondent, and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

E. RETENTION OF ENFORCEMENT RIGHTS

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

54. Nothing in this CAFO shall relieve 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.

55. 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 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.

56. 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, 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.

57. 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, 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.

58. 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. Respondent also consents to personal jurisdiction in any action to enforce this CAFO in the appropriate Federal District Court.

59. Respondent also waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that 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).

60. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. 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 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.

F. COSTS

61. Except as provided in Paragraph 47, 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.

G. TERMINATION

62. Upon receipt of the Respondent's notification to EPA Region 6 of its civil penalty payment as provided in Paragraph 41, EPA shall have thirty days (30) to raise any objections or evidence of noncompliance with this CAFO. This CAFO shall terminate when all actions

required to be taken by this CAFO have been completed and the civil penalty has been paid unless EPA raises a timely objection as provided in this paragraph.

H. EFFECTIVE DATE

63. 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 RESPONDENT:


Date: 06/03/2016



Charles Saunders
General Counsel & Secretary
INEOS Nitriles USA LLC

FOR THE COMPLAINANT:

Date: 6 JUN 2016



John Blevins
Compliance Assurance and
Enforcement Division

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 of 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 Respondent's (or their 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. 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: 6-9-16



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 9 day of June, 2016, the original and one 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, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by certified mail, return receipt requested 70151520002339900030 :

INEOS Nitriles USA LLC
Attn: Charles Saunders, General Counsel & Secretary
2600 South Shore Blvd., Suite 500
League City, Texas 77573

6/9/2016
Date

Lori Jackson
U.S. EPA, Region 6
Dallas, TX

