

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of:)	
)	<u>CONSENT AGREEMENT</u>
TransChemical, Inc.)	
)	Docket No. EPCRA-07-2023-0087
)	
Respondent.)	
)	
Proceeding under Section 325(c) of the)	
Emergency Planning and Community)	
Right-to Know Act, 42 U.S.C. § 11045(c))	
_____)	

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

1. The United States Environmental Protection Agency, Region 7 (EPA or Complainant) and TransChemical, Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

2. This proceeding is an administrative action for the assessment of civil penalties pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c).

3. This Consent Agreement and Final Order serves as notice that EPA alleges that Respondent has violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder.

Parties

4. Complainant, by delegation from the Administrator of EPA and from the Regional Administrator of Region 7, is the Director of the Enforcement and Compliance Assurance Division, EPA Region 7.

5. Respondent is TransChemical, Inc., a company registered and authorized to do business in the State of Missouri. Respondent owns and operates a facility at 419 E. De Soto Avenue, St. Louis, Missouri 63147 (“Respondent’s facility”).

Statutory and Regulatory Requirements

6. The Emergency Planning and Community Right-to-Know Act of 1986 was created to help communities plan for chemical emergencies. It requires industry to report on the storage, use and release of hazardous substances to federal, state, and local governments. EPCRA requires state and local governments and Indian tribes to use this information to prepare for and protect their communities from potential risks.

7. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that:

- (a) has ten or more full-time employees;
- (b) is an establishment with a primary Standard Industrial Code (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a) or a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and
- (c) “manufactured, processed, or otherwise used” a toxic chemical listed under Subsection 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27 or 372.28 during the calendar year

to complete and submit a toxic chemical release inventory Form R to the Administrator of EPA and to the State in which the subject facility is located by July 1, for the preceding calendar year, for each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used at the facility.

8. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30 is 25,000 pounds for any toxic chemical “manufactured or processed” and 10,000 pounds for any toxic chemical “otherwise used” for the applicable calendar year. Alternative reporting thresholds for certain other chemicals are set forth in 40 C.F.R. §§ 372.27 and 372.28.

9. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, if, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 313, 42 U.S.C. § 11023. The Debt Collection Improvement Act of 1996, 31 U.S.C.

§ 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$67,544 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 6, 2023.

Definitions

10. The term “facility” means “all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with such person). A facility may contain more than one establishment.” Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

11. The term “person” means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

12. The term “full-time employees” means “2,000 hours per year of full-time equivalent employment. A facility would calculate the number of full-time employees by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2,000 hours.” 40 C.F.R. § 372.3.

13. The term “toxic chemical” means a “chemical or chemical category listed in 40 C.F.R. § 372.65.” 40 C.F.R. § 372.3.

14. The term “manufacture” means “to produce, prepare, import or compound a toxic chemical. Manufacture also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other chemical mixture of chemicals as an impurity.” 40 C.F.R. § 372.3.

15. The term “process” means “the preparation of a toxic chemical, after its manufacture, for distribution in commerce: (1) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance; or (2) as part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product.” 40 C.F.R. § 372.3.

16. The term “otherwise use” means “any use of a toxic chemical, including a toxic chemical contained in a mixture or other trade name product or waste, that is not covered by the terms ‘manufacture’ or ‘process.’ Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless: (1) the toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of further waste management; or (2) the toxic chemical that was

disposed, stabilized, or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities. Relabeling or redistributing of the toxic chemical where no repackaging of the toxic chemical occurs does not constitute otherwise use or processing of the toxic chemical.” 40 C.F.R. § 372.3.

Factual Allegations

17. Respondent is, and at all times referred to herein was, a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

18. Respondent’s facility, located at 419 E De Soto Avenue, St. Louis, MO 63147, is a “facility” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and by 40 C.F.R. § 372.3.

19. Respondent’s facility has ten or more “full-time employees” pursuant to Section 313(b)(1)(A) of EPCRA, 42 U.S.C. § 11023(b)(1)(A), and as defined by 40 C.F.R. § 372.3.

20. Respondent’s facility is classified as NAICS Code 424690.

21. Methanol, Xylene (mixed isomers), Toluene, Tert Butyl alcohol, N-Hexane, N Butyl Alcohol, Methyl Isobutyl ketone, and Nonylphenol Ethoxylates are listed chemicals pursuant to 40 C.F.R. § 372.65 and therefore constitute “toxic chemicals” within the meaning of 40 C.F.R. § 372.3.

22. During reporting year(s) 2017 through 2019, the toxic chemicals identified above were “manufactured, processed, or otherwise used,” as those terms are defined by 40 C.F.R. § 372.3, at Respondent’s facility.

23. On November 10, 2020, EPA requested information concerning toxic chemical reporting for Reporting Years (RYs) 2015-2019. The purpose of the investigation was to determine the facility’s compliance with the requirements of Section 313 of EPCRA and the implementing regulations. Respondent provided a response on November 30, 2020.

Alleged Violations of Law

24. Complainant hereby states and alleges that Respondent has violated EPCRA and federal regulations promulgated thereunder, as follows:

Count 1

25. The Paragraphs set forth above are incorporated by reference as if fully set forth herein.

26. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing or processing Methanol is 25,000 pounds, and the threshold reporting quantity for otherwise using Methanol is 10,000 pounds.

27. The toxic chemical Methanol was manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantities during reporting years 2017 through 2019.

28. Respondent failed to file a Form R report for Methanol with the Administrator of EPA and the State of Missouri for 2017, by the July 2, 2018 deadline. Respondent filed the Form R report on or about December 31, 2018.

29. Respondent failed to file a Form R report for Methanol with the Administrator of EPA and the State of Missouri for 2018, by the July 1, 2019 deadline. Respondent filed the Form R report on or about June 30, 2020.

30. Respondent failed to file a Form R report for Methanol with the Administrator of EPA and the State of Missouri for 2019, by the July 1, 2020 deadline. Respondent filed the Form R report on or about December 17, 2020.

31. The failure to timely submit a Form R report for Methanol for each year set forth above is a separate violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

32. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above, the amount of which is set forth below.

Count 2

33. The Paragraphs set forth above are incorporated by reference as if fully set forth herein.

34. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing or processing Methyl Isobutyl Ketone is 25,000 pounds, and the threshold reporting quantity for otherwise using Methyl Isobutyl Ketone is 10,000 pounds.

35. The toxic chemical Methyl Isobutyl Ketone was manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantities during reporting years 2017 through 2018.

36. Respondent failed to file a Form R report for Methyl Isobutyl Ketone with the Administrator of EPA and the State of Missouri for 2017, by the July 2, 2018 deadline. Respondent filed the Form R report on or about December 31, 2018.

37. Respondent failed to file a Form R report for Methyl Isobutyl Ketone with the Administrator of EPA and the State of Missouri for 2018, by the July 1, 2019 deadline. Respondent filed the Form R report on or about June 30, 2020.

38. The failure to timely submit a Form R report for Methyl Isobutyl Ketone for each year set forth above is a separate violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

39. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above, the amount of which is set forth below.

Count 3

40. The Paragraphs set forth above are incorporated by reference as if fully set forth herein.

41. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing or processing N-Butyl Alcohol is 25,000 pounds, and the threshold reporting quantity for otherwise using N-Butyl Alcohol is 10,000 pounds.

42. The toxic chemical N-Butyl Alcohol was manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantities during reporting years 2017 through 2018.

43. Respondent failed to file a Form R report N-Butyl Alcohol with the Administrator of EPA and the State of Missouri for 2017, by the July 2, 2018 deadline. Respondent filed the Form R report on or about December 31, 2018.

44. Respondent failed to file a Form R report for N-Butyl Alcohol with the Administrator of EPA and the State of Missouri for 2018, by the July 1, 2019 deadline. Respondent filed the Form R report on or about June 30, 2020.

45. The failure to timely submit a Form R report for N-Butyl Alcohol for each year set forth above is a separate violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

46. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above, the amount of which is set forth below.

Count 4

47. The Paragraphs set forth above are incorporated by reference as if fully set forth herein.

48. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing or processing N-Hexane is 25,000 pounds, and the threshold reporting quantity for otherwise using N-Hexane is 10,000 pounds.

49. The toxic chemical N-Hexane was manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantities during reporting years 2017 through 2018.

50. Respondent failed to file a Form R report N-Hexane with the Administrator of EPA and the State of Missouri for 2017, by the July 2, 2018 deadline. Respondent filed the Form R report on or about December 18, 2020.

51. Respondent failed to file a Form R report for N-Hexane with the Administrator of EPA and the State of Missouri for 2018, by the July 1, 2019 deadline. Respondent filed the Form R report on or about December 18, 2020.

52. The failure to timely submit a Form R report for N-Hexane for each year set forth above is a separate violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

53. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above, the amount of which is set forth below.

Count 5

54. The Paragraphs set forth above are incorporated by reference as if fully set forth herein.

55. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing or processing Tert-Butyl Alcohol is 25,000 pounds, and the threshold reporting quantity for otherwise using Tert-Butyl Alcohol is 10,000 pounds.

56. The toxic chemical Tert-Butyl Alcohol was manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantities during reporting years 2017 through 2019.

57. Respondent failed to file a Form R report Tert-Butyl Alcohol with the Administrator of EPA and the State of Missouri for 2017, by the July 2, 2018 deadline. Respondent filed the Form R report on or about December 31, 2018.

58. Respondent failed to file a Form R report for Tert-Butyl Alcohol with the Administrator of EPA and the State of Missouri for 2018, by the July 1, 2019 deadline. Respondent filed the Form R report on or about June 30, 2020.

59. Respondent failed to file a Form R report for Tert-Butyl Alcohol with the Administrator of EPA and the State of Missouri for 2019, by the July 1, 2020 deadline. Respondent filed the Form R report on or about December 17, 2020.

60. The failure to timely submit a Form R report for Tert-Butyl Alcohol for each year set forth above is a separate violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

61. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above, the amount of which is set forth below.

Count 6

62. The Paragraphs set forth above are incorporated by reference as if fully set forth herein.

63. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing or processing Toluene is 25,000 pounds, and the threshold reporting quantity for otherwise using Toluene is 10,000, pounds.

64. The toxic chemical Toluene was manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantities during reporting years 2017 through 2019. Respondent failed to file a Form R report Toluene with the Administrator of EPA and the State of Missouri for 2017, by the July 2, 2018 deadline. Respondent filed the Form R report on or about December 31, 2018.

65. Respondent failed to file a Form R report for Toluene with the Administrator of EPA and the State of Missouri for 2018, by the July 1, 2019 deadline. Respondent filed the Form R report on or about June 30, 2020.

66. Respondent failed to file a Form R report for Toluene with the Administrator of EPA and the State of Missouri for 2019, by the July 1, 2020 deadline. Respondent filed the Form R report on or about December,17, 2020.

67. The failure to timely submit a Form R report for Toluene for each year set forth above is a separate violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

68. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above, the amount of which is set forth below.

Count 7

69. The Paragraphs set forth above are incorporated by reference as if fully set forth herein.

70. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing or processing Xylene (mixed isomers) is 25,000 pounds, and the threshold reporting quantity for otherwise using Xylene (mixed isomers) is 10,000 pounds.

71. The toxic chemical Xylene (mixed isomers) was manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantities during reporting years 2017 through 2019.

72. Respondent failed to file a Form R report Xylene (mixed isomers) with the Administrator of EPA and the State of Missouri for 2017, by the July 2, 2018 deadline. Respondent filed the Form R report on or about December 31, 2018.

73. Respondent failed to file a Form R report for Xylene (mixed isomers) with the Administrator of EPA and the State of Missouri for 2018, by the July 1, 2019 deadline. Respondent filed the Form R report on or about June 30, 2020.

74. Respondent failed to file a Form R report for Xylene (mixed isomers) with the Administrator of EPA and the State of Missouri for 2019, by the July 1, 2020 deadline. Respondent filed the Form R report on or about December 17, 2020.

75. The failure to timely submit a Form R report for Xylene (mixed isomers) for each year set forth above is a separate violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

76. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above, the amount of which is set forth below.

Count 8

77. The Paragraphs set forth above are incorporated by reference as if fully set forth herein.

78. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing or processing Nonylphenol Ethoxylates is 25,000 pounds, and the threshold reporting quantity for otherwise using Nonylphenol Ethoxylates is 10,000 pounds.

79. The toxic chemical Nonylphenol Ethoxylates was manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantities during reporting year 2019.

80. Respondent failed to file a Form R report for Nonylphenol Ethoxylates with the Administrator of EPA and the State of Missouri for 2019, by the July 1, 2020 deadline. Respondent filed the Form R report on or about December 17, 2020.

81. The failure to timely submit a Form R report for Nonylphenol Ethoxylates as set forth above is a separate violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

82. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above, the amount of which is set forth below.

CONSENT AGREEMENT

83. For the purposes of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

84. Respondent consents to the issuance of this Consent Agreement Final Order and agrees to comply with the terms of this Consent Agreement and Final Order.

85. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

86. The parties consent to service of this Consent Agreement and Final Order electronically at the following e-mail addresses: *huston.liz@epa.gov* (for Complainant) and *LBurchi@lawbc.com* (for Respondent). Respondent understands that the Consent Agreement and Final Order will become publicly available upon filing.

Penalty Payment

87. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of \$49,953, as set forth below.

88. Respondent shall pay the penalty within thirty (30) days of the effective date of this Consent Agreement and Final Order. Such payment shall identify Respondent by name and docket number and shall be by cashiers or certified check made payable to the “United States Treasury” and remitted to:

U.S. Environmental Protection Agency, Region 7
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>

A copy of the check or other information confirming payment shall simultaneously be e-mailed to:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov

and to:

Elizabeth Huston
Huston.Liz@epa.gov

89. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of the debt collection, including processing and handling costs and attorneys’ fees. In addition, a non-payment penalty charge of six (6) percent per year, compounded annually, will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

90. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

Supplemental Environmental Project

91. In response to the violations of EPCRA alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by EPCRA or any other federal, state, or local law, Respondent agrees to complete the SEP as described in this Consent Agreement and Final Order, which the parties agree is intended to secure significant environmental or public health protection and improvement.

92. Respondent shall complete the following SEP: Respondent has agreed to construct a curbed containment area around all areas that border neighboring properties and the rail lines located along the east and west of the property (See Attachment A- Map, which is hereby incorporated by reference). In constructing the containment area, Respondent will first remove existing blacktop and concrete at the site and any other debris at the site. Respondent will then install a 6” thick concrete containment pad that includes wire mesh that is designed to minimize and mitigate the potential for releases at the facility. In addition to constructing the concrete replacement with steel reinforcement, Respondent will include a 4” concrete curb and gutter installation that includes steel reinforcement. Respondent shall spend no less than \$151,783 on implementing the SEP. Respondent agrees that the SEP shall be completed within 12 months of the Effective Date of this Consent Agreement and Final Order.

93. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA’s 2015 Update to the 1998 Supplemental Environmental Projects Policy (March 10, 2015).

94. The SEP advances at least one of the objectives of Section 313 of EPCRA by minimizing the potential consequences of accidental releases and enabling local communities to better plan for, respond effectively to, and address the risks of a potential chemical release. In the event of a spill or other emergency, this containment structure would aid first responders and better protect the environment by keeping any materials, fire water, or storm water on Respondent’s property and prevent any runoff or release from reaching the rail property or neighboring property. This would further allow for more efficient and expedient clean up and prevent harm to the environment.

95. The SEP is not inconsistent with any provision of Section 313 of EPCRA. The SEP relates to the alleged violations, and is designed to reduce the adverse impact and overall risk to public health to which the alleged violations contribute by preventing releases from Respondent’s property, and enabling a more effective response to releases at Respondent’s Facility.

96. Respondent alone selected the SEP. This SEP shall be performed in accordance with the requirements of this Consent Agreement and Final Order.

97. Within 12 months of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit a SEP Completion Report to the EPA contact identified below. The SEP Completion Report shall be subject to EPA review and approval as provided below and shall contain the following information:

- (a) detailed description of the SEP as implemented, including documentation of costs and copies of all purchase and delivery orders;
- (b) description of any problems encountered in implementation of the projects and the solution thereto;
- (c) description of the specific environmental and/or public health benefits resulting from implementation of the SEP; and
- (d) certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order.

98. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all SEP costs. For purposes of this paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

99. The SEP Completion Report shall include the statement of Respondent, through an officer, signed and certifying under penalty of law the following:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

100. The SEP Completion Report shall be submitted on or before the due date specified above to Sean Bergin, Compliance Officer, via email at *bergin.sean@epa.gov*.

101. SEP Completion Report Approval: The SEP Completion Report shall be reviewed in accordance with the procedures outlined in this paragraph. EPA will review the SEP Completion Report and may approve, approve with modifications, or disapprove and provide comments to Respondent. If the SEP Completion Report is disapproved with comments, Respondent shall incorporate EPA’s comments and resubmit the SEP Completion Report within thirty (30) days of receipt of EPA’s comments. If Respondent fails to revise the SEP Completion

Report in accordance with EPA's comments, Respondent shall be subject to the stipulated penalties as set forth below.

102. Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP under this Consent Agreement and Final Order from the date of its execution of this Consent Agreement and Final Order shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency to enforce federal laws.

103. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- (a) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$151,783;
- (b) That, as of the date of executing this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- (c) That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement and Final Order;
- (d) That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
- (e) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- (f) That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
- (g) Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described above.

104. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- (a) Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- (b) If EPA agrees, in its sole discretion, that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- (c) If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- (d) Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph (b), above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

105. Stipulated penalties for failure to complete SEP.

- (a) In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP, including to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP set forth in Paragraph 92, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - i. If the SEP has not been completed satisfactorily and timely pursuant to this Consent Agreement and Final Order, including spending the minimum amount on the SEP set forth above, in Paragraph 92, Respondent shall pay a stipulated penalty in an amount that shall not exceed \$155,000 as determined by EPA in its unreviewable discretion.
 - ii. For failure to submit the SEP Completion Report, Respondent shall pay a stipulated penalty in the amount of \$250 for each day after the report was originally due until the report is submitted.
- (b) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

- (c) Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity or other resolution under this Consent Agreement and Final Order.
- (d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of the Penalty Payment section above. Interest and late charges shall be paid as stated in herein.
- (e) Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
- (f) EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement and Final Order.

Effect of Settlement and Reservation of Rights

106. Full payment of the civil penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil and administrative penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of EPCRA or any other applicable law and/or regulation administered by the EPA.

107. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in the paragraph directly below.

108. Respondent certifies by signing this Consent Agreement that it is presently in compliance with all requirements of EPCRA and its implementing regulations.

109. Nothing in this Agreement shall be construed as a release from any other action under law and/or regulation administered by EPA. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

110. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

111. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

112. This Consent Agreement and Final Order constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

113. The undersigned representative of Respondent certifies that they are fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to legally bind Respondent to it.

114. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

115. This Consent Agreement shall apply to and be binding upon Respondent and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Agreement.

116. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

COMPLAINANT:

U. S. Environmental Protection Agency

Date: _____ By: _____
David Cozad
Director
Enforcement and Compliance Assurance Division

Date: _____ By: _____
Elizabeth Huston
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:

TransChemical, Inc.

Date: 4/14/23 By: Marilyn Stovall Fitzgerald

Marilyn Stovall Fitzgerald
Printed Name

President / owner
Title

FINAL ORDER

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date: _____ By: _____
Karina Borromeo
Regional Judicial Officer
United States Environmental Protection Agency
Region 7

CERTIFICATE OF SERVICE
(for EPA use only)

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of TransChemical, Inc., EPA Docket No. EPCRA-07-2023-0087, was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Elizabeth Huston
Office of Regional Counsel
Huston.elizabeth@epa.gov

Sean Bergin
Enforcement and Compliance Assurance Division
Bergin.sean@epa.gov

Copy via Email to counsel for Respondent:

Lisa R. Burchi
Bergeson & Campbell, P.C.
2200 Pennsylvania Avenue, NW, Suite 100W
Washington, D.C. 20037
lburchi@lawbc.com

Dated this _____ day of _____, _____.

Signed

The below diagram highlights the approximate outlines & limits of the proposed containment area at TransChemical Inc.'s facility located at 419 East Desoto Avenue, Saint Louis, MO 63147.

