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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
Dallas, Texas

23 APR -6 AM 2:47

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

TotalEnergies Petrochemicals & Refining,
USA, Inc.

Respondent.

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Docket No. CAA-06-2023-3307

ADMINISTRATIVE ORDER ON CONSENT

Preliminary Statement

1. The U.S. Environmental Protection Agency, Region 6 ("EPA" or "Complainant"), and TotalEnergies Petrochemicals & Refining, USA, Inc. ("Respondent") have agreed to voluntarily enter into this Administrative Order on Consent ("Order") for the purposes of carrying out the goals of Section 112(r) of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68.

Jurisdiction

2. This Order is entered into pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B). Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), provides that whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of Subchapter I of the CAA, which includes, among other things, the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder, the Administrator may issue an order requiring compliance with such requirement or prohibition.

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division, EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondent is TotalEnergies Petrochemicals & Refining, USA, Inc., a corporation incorporated in the state of Delaware and authorized to conduct business in the state of Texas.

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The objective of Section 112(r) is to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

6. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), mandates that the Administrator establish a threshold quantity for any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The list of regulated substances and respective threshold quantities is codified at 40 C.F.R. § 68.130.

7. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for stationary sources with threshold quantities of regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). On June 20, 1996, EPA promulgated a final rule

known as the Risk Management Program, 40 C.F.R. Part 68 – Chemical Accident Prevention Provisions, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

8. The regulations at 40 C.F.R. Part 68 require owners and operators to develop and implement a Risk Management Program at each stationary source with over a threshold quantity of regulated substances. The Risk Management Program must include, among other things, a hazard assessment, a prevention program, and an emergency response program. The Risk Management Program is described in a Risk Management Plan (RMP) that must be submitted to the EPA.

9. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source subject to 40 C.F.R. Part 68 no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

10. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68 apply to each program level of covered processes. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and if it is in a specified North American Industrial Classification System code or is subject to the OSHA process safety management standard, 29 C.F.R. 1910.119.

Definitions

11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

12. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and the regulation at 40 C.F.R. § 68.3 defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

13. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C) and the regulation at 40 C.F.R. § 68.3 defines “stationary source,” in part, as 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.

14. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

15. The regulation at 40 C.F.R. § 68.3 defines “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

16. The regulation at 40 C.F.R. § 68.3 defines “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances or combination of these activities. For the purposes 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.

17. The regulation at 40 C.F.R. § 68.3 defines “covered process” as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. §

68.115.

EPA Findings of Fact and Conclusions of Law

18. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

19. Respondent is the owner and operator of the facility located at 11455 Interstate Highway 10, Beaumont, Texas (the “Facility”).

20. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, the EPA conducted an inspection of the Facility on June 7-9, 2022, to determine Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 (the “Inspection”).

21. The Facility is a “stationary source” pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3.

22. The Respondent operates a petrochemical manufacturing process at the Facility that produces hydrocarbon resins.

23. Respondent’s activities at the Facility involve the use, storage, manufacturing, handling, and/or on-site movement of boron trifluoride [borane, trifloro-], 1,3-pentadiene, and pentane.

24. Respondent’s petrochemical manufacturing process at the Facility meets the definition of a “process” as defined by 40 C.F.R. § 68.3.

25. Boron trifluoride [borane, trifluoro-], 1,3-pentadiene, and pentane are each a “regulated substance” pursuant to Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3. The threshold quantity for boron trifluoride [borane, trifluoro-], as listed in 40 C.F.R. § 68.130 is 5,000 pounds. The threshold quantity for 1,3-pentadiene and pentane, as listed in 40 C.F.R. § 68.130 is 10,000 pounds.

26. Respondent has greater than a threshold quantity of boron trifluoride [borane, trifluoro-], 1,3-pentadiene, and pentane in a process at the Facility, meeting the definition of “covered process” as defined by 40 C.F.R. § 68.3.

27. From the time Respondent first had on-site greater than a threshold quantity of boron trifluoride [borane, trifloro-], 1,3-pentadiene, or pentane in a process, Respondent was subject to the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68 because it was the owner or operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

28. From the time Respondent first had on-site greater than a threshold quantity of boron trifluoride [borane, trifluoro-], 1,3-pentadiene, or pentane in a process, Respondent was required to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 prevention requirements set forth in 40 C.F.R. § 68.12(d) because, pursuant to 40 C.F.R. § 68.10(i), the covered processes at the Facility did not meet the eligibility requirements of Program 1; are in North American Industry Classification System code 325211 - Plastics Material and Resin Manufacturing; and are subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

EPA Findings of Violation

29. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

30. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

Management

31. The regulation at 40 C.F.R. § 68.12(d)(1) requires the owner or operator of a

stationary source with a process subject to Program 3 to develop and implement a management system as provided in § 68.15. Pursuant to 40 C.F.R. § 68.15(c), when responsibility for implementing individual requirements of the risk management program is assigned to persons other than the person identified under 40 C.F.R. § 68.15(b), the names or positions of these people shall be documented, and the lines of authority defined through an organization chart or similar document.

32. The organization chart provided to EPA by Respondent does not address risk management program responsibilities.

33. Respondent's failure to document the names or positions of the people and define the lines of authority with responsibility for implementing the individual requirements of the risk management program pursuant to 40 C.F.R. § 68.15(c), as required for Program 3 processes by 40 C.F.R. § 68.12(d)(1), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Operating Procedures

34. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.69(a)(2)(i) and (ii), the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address, among other things, consequences of deviation for operating limits, and steps required to correct or avoid deviation for operating limits.

35. Operating procedures reviewed during EPA's inspection did not include consequences of deviation and steps required to avoid deviation for operating limits.

36. Respondent's failure to include the consequences of deviation and steps to correct

or avoid deviation in its operating procedures for operating limits pursuant to 40 C.F.R. § 68.69(a)(2)(i) and (ii), as required for Program 3 processes by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Training

37. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.71(b), the owner or operator shall provide refresher training at least every three years, and more often, if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. Pursuant to 40 C.F.R. § 68.71(c) the owner or operator shall ascertain that each employee involved in operating a process has received and understood the required training and prepare a record containing the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

38. Respondent's training records demonstrated that Respondent failed to provide refresher training to employees at least every three years and failed to prepare records that included the date of the training and means used to verify that the employee understood the training.

39. Respondent's failures to provide refresher training at least every three years to each employee involved in operating a process and prepare a record documenting the training date and means used to verify that the employee understood the training pursuant to 40 C.F.R. § 68.71(b) and (c), as required for Program 3 processes by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Compliance Audit

40. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.79(d), the owner or operator shall promptly determine and document an appropriate response to each finding of the compliance audit, and document that deficiencies have been corrected.

41. Respondent's two most recent compliance audits were conducted on September 19, 2016, and August 19-23, 2019. Respondent failed to resolve findings from the 2019 compliance audit. In addition, there were seven repeat findings from the 2016 audit.

42. Respondent's failure to promptly determine and document a response to the August 2019 compliance audit, and document that all deficiencies had been corrected pursuant to 40 C.F.R. § 68.79(d), as required for Program 3 processes by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Order for Compliance

43. Based on the EPA Findings of Fact and Conclusions of Law and the EPA Findings of Violation set forth above, and pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), as amended, Respondent is hereby ORDERED and agrees to comply with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68.

44. EPA and Respondent agree that Respondent shall, as expeditiously as possible, but in no event later than ninety (90) days, from the effective date of this Order, complete the following actions ("Compliance Actions"):

- a. In accordance with 40 C.F.R. § 68.15(c), Respondent shall update its organization chart to include the names or positions and defined lines of authority for those

responsible for implementing RMP requirements at the Facility.

- b. In accordance with 40 C.F.R. § 68.69(a)(2)(i) and (ii), Respondent shall update its operating procedures to include consequences of deviation and steps required to correct or avoid deviation.
- c. In accordance with 40 C.F.R. § 68.71(b), Respondent shall provide refresher training to each employee involved in operating a process that has not had refresher training within the last three years. In accordance with 40 C.F.R. § 68.71(c), Respondent shall prepare and maintain a record documenting the training date and means used to verify that the employee understood the training.
- d. In accordance with 40 C.F.R. § 68.79(d), Respondent shall correct each deficiency from the August 2019 Compliance Audit and submit documentation verifying that each deficiency has been corrected.

Submissions

45. Respondent must provide documentation of completion of the Compliance Actions described above to EPA within one hundred twenty (120) days of the effective date of this Order. All documentation shall be submitted as set forth in this sub-section.

46. All submissions to EPA required by this Order shall contain the following certification signed by an authorized representative of Respondent:

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, 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.

47. All submissions to EPA required by this Order shall be sent by electronic mail to:

Diana Lundelius

Enforcement and Compliance Assurance Division
Air Enforcement Division
U.S. Environmental Protection Agency, Region 6 (ECDAC)
1201 Elm Street, Suite 500 (ECDAC)
Dallas, Texas 75270-2101
lundelius.diana@epa.gov

48. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless identified and determined to be confidential business information pursuant 40 C.F.R. Part 2, Subpart B.

Stipulated Penalties

49. Respondent shall be liable for stipulated penalties for failure to comply with the requirements of this Order. The following stipulated penalties shall accrue per violation per day for failure to comply with the Compliance Actions or Submissions requirements above:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$7,500	1st through 15th day
\$15,000	16 th through 30 th day
\$37,500	31st day and beyond

50. All penalties shall begin to accrue on the day after the complete performance is due, or on the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity required by this Order.

51. The payment of penalties shall not alter in any way Respondent's obligation to comply with the provisions of this Order.

52. All penalties accruing under this section shall be due and payable to the United States within thirty (30) days of Respondent's receipt from the EPA of a demand for payment of stipulated penalties. Such payments shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

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

53. A copy of the check or other information confirming payment shall simultaneously be sent by electronic mail to:

Diana Lundelius
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 6 (ECDAC)
1201 Elm Street, Suite 500 (ECDAC)
Dallas, Texas 75270-2101
lundelius.diana@epa.gov

54. Respondent understands that failure to timely pay any portion of the stipulated penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on the stipulated penalty from the date of delinquency until such stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) 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. 31 U.S.C. § 3717(e)(2).

Other Terms and Conditions

55. By entering into this Order, Respondent: (a) consents to and agrees to not contest the EPA's authority or jurisdiction to issue or enforce this Order; and (b) agrees to undertake all actions required by this Order.

56. Respondent neither admits nor denies the EPA Findings of Fact and Conclusions of Law and the EPA Findings of Violation.

57. Respondent and the EPA agree to bear their respective costs and attorney's fees. Respondent waives its right to seek reimbursement of their costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 104-121), and any regulations promulgated thereunder.

General Provisions

58. Respondent waives any and all remedies, claims for relief and otherwise available rights to jurisdictional or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1), or under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

59. Any violation of this Order may result in an additional enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413. The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes the Administrator to:

- a. issue an administrative penalty order under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), assessing a civil penalty not to exceed \$51,796 (or amount as adjusted by the Civil Monetary Penalty Adjustment Rule) per day of violation, pursuant to Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B);
- b. bring a civil judicial enforcement action for permanent or temporary injunction, or to assess and recover a civil penalty not to exceed \$109,024 (or amount as adjusted by the Civil Monetary Penalty Adjustment Rule) per day of violation, or

both, pursuant to Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2); or

- c. request the Attorney General to commence a criminal action pursuant to Section 113(c) of the CAA, 42 U.S.C. § 7413(c).

60. This Order does not resolve any civil or criminal claims for violations alleged in this Order. In accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), issuance of this Order does not preclude EPA from assessing penalties, obtaining injunctive relief, or taking any other action authorized under the CAA, or other applicable federal laws or regulation. This Order does not affect the obligation of Respondent to comply with all federal, state, and local statutes, regulations, and permits.

61. 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 public health, welfare, or the environment.

62. Nothing in this Order shall limit EPA's right to obtain access to, and/or inspect the Facility, and/or to request additional information from Respondent pursuant to the authority of Section 114 of the CAA, 42 U.S.C. § 7414.

63. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of the Order for Compliance is restitution, remediation, or required to come into compliance with the law.

64. By signing this Order, the undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Order, and to execute and legally bind Respondent to this Order.

65. The provisions of this Order shall apply and be binding upon Respondent and its

agents, officers, directors, employees, trustees, authorized representatives, successors, and assigns. Respondent shall ensure that any agents, officers, directors, employees, contractors, consultants, firms or other persons or entities acting under or for Respondent with respect to matters included herein comply with the terms of this Order. From the effective date until termination of this Order, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.

66. Pursuant to Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), this Consent Order shall be effective when fully executed, shall not exceed the earlier of one year or the date of a determination by the EPA that Respondent has achieved compliance with all terms of this Order, and shall be nonrenewable.

67. The EPA and Respondent may subsequently amend this Order, in writing, in accordance with the authority of the CAA. In the event of any amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by the original Order.

68. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

69. The EPA and Respondent agree to the use of electronic signatures for this matter. The EPA and Respondent further agree to electronic service of this Order by electronic mail to the following:

To EPA:

mills.clarissa@epa.gov

To Respondent:

stella.pulman@totalenergies.com

RESPONDENT:
TOTALENERGIES PETROCHEMICALS & REFINING, USA, INC.

Date: 4-4-23

John Padilla
Signature

John Padilla
Name

Plant Manager
Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Cheryl T. Seager

Digitally signed by
CHERYL SEAGER
Date: 2023.04.06
14:23:27 -05'00'

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

CERTIFICATE OF SERVICE

I certify that on the date noted below I sent a true and correct copy of the original

Administrative Order on Consent to:

Stella Pulman
Assistant General Counsel – HSE
Legal Department
TotalEnergies American Services, Inc.
Stella.pulman@totalenergies.com

CLARISSA
MILLS

Digitally signed by
CLARISSA MILLS
Date: 2023.04.06
14:42:12 -05'00'

Clarissa Mills
Office of Regional Counsel
U.S. EPA