

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY REGION 6  
DALLAS, TEXAS

FILED  
2014 AUG 26 AM 9:10  
REG. DIST. CLERK  
EPA REGION VI

In the Matter of: §  
§  
Rubicon, LLC, § EPA Docket No. CAA-06-2014-3316  
§  
Geismar, Louisiana §  
Respondent §

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**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 Rubicon, 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 STATEMENTS**

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, 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 the violations and facts alleged in the 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.

6. Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppels, issue preclusion, or claim splitting for violations not alleged in this CAFO.

7. Nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, or 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.

8. Respondent represents that the undersigned representative is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind the Respondent to the terms and conditions of this CAFO.

9. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

## **II. ALLEGATIONS**

10. Respondent, Rubicon, LLC, is a limited liability corporation registered to conduct business in the State of Louisiana.

11. Respondent owns and operates a chemical production facility located at 9156 Highway 75, Geismar, Louisiana (“Facility”).

12. The Respondent produces, processes, handles, and stores a variety of regulated substances and other extremely hazardous substances at the Facility, including Muriatic Acid (“HCl”) at 35.5%, which is both toxic and corrosive.

13. Respondent produces HCl at the facility in large quantities.

14. The HCl is transported from the facility to customers using various modes of transportation. All HCl rail cars are customer owned and maintained.

15. The rail cars used to transport HCl arrive at the facility empty, and normally with the vent valve in the closed position.

16. On December 13, 2013, an employee of the Respondent’s contractor, who was an HCl loading technician (“technician”), was loading HCl into a railcar at the facility.

17. The technician had difficulty loading this particular rail car. The transfer pump that was pushing HCl into the rail car shut off on two occasions during the loading process and had to be manually reset and restarted by the technician.

18. Prior to loading the rail car, the technician had “opened” the vent valve on the rail car (as was the general practice, since rail cars normally arrived with a closed vent valve).

19. However, in this specific instance, the railcar arrived with a vent valve in the open position and having a badly worn valve stem, which the technician “opened” using a pipe wrench.

20. The technician believed he “opened” the valve, but he actually closed the valve.

21. Had the valve stem not been badly worn, the technician may have realized the valve was in the closed position before loading HCl into the rail car.

22. The transfer pump is designed to automatically shut-off when a “low flow” condition is detected by flow measurement instruments or a “low amperage” condition is detected by the transfer pump’s power monitor.

23. With the vent valve closed on the rail car, the transfer pump power monitor detected a “low amperage” condition that automatically shut off the transfer pump two times during the loading operation.

24. Respondent’s Standard Operating Procedures (“SOPs”), implementing measures to prevent identified hazards, discuss this event and stated that: “If the loading pump shuts down while loading, investigate to determine the problem prior to resuming the loading.”

25. The first time the pump automatically shutoff, the technician investigated the transfer pump trip by examining the rail car, valve line up and the rail car instrumented controls.

26. After investigating, the technician determined it was not a low flow trip, but the transfer pump automatically shut off on “low amperage.”

27. The technician determined the “low amperage” shut off was a spurious or false trip. At this time, there was no high pressure condition at the transfer pump (the rail car pressure relieved itself by back flowing through the transfer pump into the tank) and the flow meter indicated that the rail car was partially loaded.

28. After determining the transfer pump trip was a spurious trip, the technician manually reset and restarted the transfer pump to complete the operation of filling the rail car.

29. After the transfer pump automatically shut-off a second time, the technician reasoned that the transfer pump had shut off on “low amperage” again. However, the technician did not recognize that the “low flow” trip had also activated closing the automated transfer valve trapping pressure within the rail car.

30. The rail car had not been filled with the originally intended amount of HCl, but was loaded with an amount in an acceptable range to classify as a full load. The technician decided to discontinue loading the HCl rail car.

31. After loosening three of the four bolts connecting the transfer hose to the rail car, pressurized aqueous HCl began to spray from the flanged connection.

32. HCl is an extremely hazardous substance due to its toxic and corrosive properties.

33. The HCl Loading Technician was sprayed with HCl.

34. Liquid HCl flowed from the transfer hose and rail car.

35. HCl was released to the air.

36. The HCl Loading Technician accessed a safety shower and radioed for assistance.

37. Approximately 27 pounds of HCl was released to the air, and approximately 4,000 pounds of muriatic acid (1,410 pounds of HCl and 2,590 pounds of demineralized water) was released to the ground.

38. The 1,410 pounds of HCl released to the ground was isolated and

neutralized in on-site ditches and routed to on-site permitted deepwells for disposal.

39. The HCl loading area is situated near the edge of the Rubicon facility.

40. The Praxair facility is immediately adjacent to the Rubicon HCl rail car loading area.

41. A precautionary shelter-in-place was issued by Respondent for the Praxair facility based on the Respondent's good stewardship and in voluntary cooperation with the local authorities' pre-established protocols.

42. A cloud of HCl vapor wafted across an undeveloped area located adjacent to the facility.

43. It is unknown if the HCl vapor caused environmental damage to offsite areas.

44. In response to this incident, Respondent has revised training, purchased and implemented the use of improved valve tools, determined that full face masks are more appropriate than partial face masks for HCl Loading Technicians, and begun a project to add pressure indication on the liquid transfer lines.

45. 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.

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

47. 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).

48. 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.

49. At the Facility, Respondent 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.

50. The release of the HCl at the Facility on December 13, 2013, 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).

51. The employee received minor chemical burns due to exposure to the HCl in the facial area between his half-mask respirator and chemical goggles, a precautionary shelter-in-place took place at a nearby facility in accordance with pre-established protocols, and a cloud of HCl vapor wafted offsite into an adjacent area.

52. Respondent failed to design and maintain a safe facility and did not take such necessary steps to prevent accidental releases by not ensuring that operating procedures were implemented appropriately, including the failure to fully investigate the transfer pump automatic shutoff by not checking the actual pressure of the rail car tank.

53. 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).

54. Respondent is therefore subject to the assessment of penalties pursuant to sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), for at least one day of violation of the general duty clause of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

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

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

55. 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, 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 \$33,000.

56. 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-06-2014-3316 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.

57. 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.

58. 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).

59. 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**

60. 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**

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

62. 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.

63. 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 other Federal, State, or local laws or regulations.

64. 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**

65. 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**

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

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

**FOR THE RESPONDENT:**

8/22/2014  
Date

Mark K. Dearman  
Mark K. Dearman  
General Manager  
Rubicon, LLC

**FOR THE COMPLAINANT:**

8/26/14  
Date

John Blevins  
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: 8/28/14

  
Regional Judicial Officer


CERTIFICATE OF SERVICE

I hereby certify that the original and a 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, 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: # 7007 3020 0002 5102 2070

Mr. David Nutt, Esquire  
Huntsman International, LLC  
8600 Gosling Road  
The Woodlands, Texas 77381

Date: August 29, 2014

  
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U.S. EPA, Region 6  
Dallas, Texas