



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUN 15 2012

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Greg Pflum  
Vice President and General Manager  
BASF, The Chemical Company  
1609 Biddle Avenue  
Wyandotte, Michigan 48192

Re: In the Matter of: BASF, The Chemical Company  
Docket No. **CAA-05-2012-0032**

Dear Mr. Cooper:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves *In the Matter of BASF, The Chemical Company*, Docket No. CAA-05-2012-0032. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on JUN 19 2012.

Pursuant to paragraph 145 of the CAFO, BASF, The Chemical Company must pay the civil penalty within 30 days of date the CAFO is filed. Your check or electronic funds transfer must display the case name, case docket number CAA-05-2012-0032, and the billing document number 2751203A034.

Please direct any questions regarding this case to Mark Palermo, Associate Regional Counsel, 312-886-6082.

Sincerely,

*Sara Breneman*

Sara Breneman  
Chief  
Air Enforcement and Compliance Assurance  
Section MI/WI

Enclosure

cc: Wilhemina McLemore, MDEQ

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. CAA-05-2012-0032</b>
	)	
<b>BASF Corporation</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Wyandotte, Michigan,</b>	)	<b>Under Section 113(d) of the Clean Air Act</b>
	)	<b>42 U.S.C. § 7413(d)</b>
<b>Respondent.</b>	)	
_____	)	

**RECEIVED  
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**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is BASF Corporation, a corporation doing business in Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

#### **A. General**

9. The CAA establishes a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b)(1).

10. Section 112 of the CAA sets forth a national program for the control of Hazardous Air Pollutants (HAPs). 42 U.S.C. § 7412. As originally promulgated in the CAA Amendments of 1970, Section 112 directed EPA to publish a list of HAPs. HAP was defined as "an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the Administrator may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness." 42 U.S.C. § 1857c-7 (1971). At that time, Congress directed EPA to establish HAP standards that provided "an ample margin of safety to protect the public health from such hazardous air pollutant." *Id.*

11. Through the CAA Amendments of 1990, Congress replaced the then-existing Section 112 and established a new program for the control of HAPs. H.R. Rep. No. 101-490, 101<sup>st</sup> Cong., 2d Sess., pt 1 at 324 (1990). With the 1990 amendments, Congress itself established a list of 188 HAPs believed to cause adverse health or environmental effects. 42 U.S.C. § 7412(b)(1).

12. Congress directed EPA to publish a list of all categories and subcategories of, *inter alia*, major sources of HAPs. 42 U.S.C. § 7412(c).

13. “Major source” was and is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs. 42 U.S.C. § 7412(a)(1) and 40 C.F.R. § 63.2.

14. Congress directed EPA to promulgate regulations establishing emission standards for each category or subcategory of, *inter alia*, major sources of HAPs listed. 42 U.S.C. § 7412(d)(1). These emission standards must require the maximum degree of reduction in emissions of HAPs that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for the new or existing sources in the category or subcategory to which the emission standard applies. 42 U.S.C. § 7412(d)(2).

15. To the extent that it is not feasible to prescribe or enforce an emission standard for control of a HAP, Congress authorized EPA to promulgate “design, equipment, work practice, or operational” standards, which are to be treated as emission standards. 42 U.S.C. § 7412(d)(2).

16. The emission standards promulgated under Section 112 of the 1990 Amendments to the CAA, 42 U.S.C. § 7412, are known as the National Emission Standards for Hazardous Air Pollutants (“NESHAPs”) for Source Categories or “MACT” (“maximum achievable control technology”) standards. These emission standards are found in Part 63 of Title 40 of the Code of Federal Regulations.

17. Pursuant to Section 112(c) of the CAA, 42 U.S.C. § 7412(c), EPA identified on July 16, 1992 amino resins production, phenolic resins production and polyether polyol production as each a category of sources of HAPs. 57 Fed. Reg. 31576.

18. After the effective date of any emission standard, limitation, or regulation promulgated pursuant to Section 112 of the CAA, no person may operate a source in violation of such standard, limitation, or regulation. 42 U.S.C. § 7412(i)(3).

***B. Amino/Phenolic Resins NESHAP – Part 63, Subpart OOO***

19. Pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d), EPA on January 20, 2000 promulgated the NESHAP for the Manufacture of Amino/Phenolic Resins at 40 C.F.R. Part 63, Subpart OOO (65 Fed. Reg. 3290). This commonly is referred to as “Subpart OOO.”

20. Subpart OOO applies to the owners and operators of processes that produce amino/phenolic resins and that are located at a plant site that is a major source as defined at 40 C.F.R. § 63.2. 40 C.F.R. § 63.1400(a).

21. The “affected source” to which the emission standards of Subpart OOO apply is the total of all amino/phenolic resin process units (APPUs). 40 C.F.R. § 63.1400(b). It also includes, *inter alia*, the associated heat exchangers and equipment required by, or utilized as a method of compliance with Subpart OOO. *Id.*

22. “APPU” means a collection of equipment assembled and connected by hardpiping or ductwork used to process raw materials and to manufacture an amino/phenolic resin as its primary product, and includes unit operations; process vents; storage vessels, as determined in 40 C.F.R. § 63.1410; and the equipment that is subject to the equipment leak provisions as specified in § 63.1410. 40 C.F.R. § 63.1402(b).

23. A “new affected source” that is subject to the new source provisions of Subpart OOO includes each affected source that commences construction or reconstruction after December 14, 1998. 40 C.F.R. § 63.1400(d).

24. Subpart OOO establishes standards for, among other things, continuous process vents, 40 C.F.R. § 63.1405; batch process vents, *id.* Sections 63.1406 - 63.1408; and equipment leaks, *id.* Section 63.1410.

25. With respect to equipment leak standards under Subpart OOO, the equipment leak provisions of Subpart OOO found at 40 C.F.R. § 63.1402 refer to and incorporate the requirements of the National Emission Standards for Equipment Leaks – Control Level 2 Standards at 40 C.F.R. Part 63, Subpart UU (Subpart UU).

26. Pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d), EPA, as part of its “Generic MACT” standards rulemaking, promulgated on June 29, 1999 the National Emission Standards for Equipment Leaks – Control Level 2 Standards at 40 C.F.R. Part 63, Subpart UU (64 Fed. Reg. 34899). These standards generally are referred to as “Subpart UU.”

27. Subpart UU sets forth work practice standards and testing and recordkeeping requirements to ensure that any leaks of organic HAPs from equipment are timely detected and repaired. The provisions in Subpart UU commonly are referred to as “Leak Detection and Repair” provisions, or “LDAR” for short.

28. The “equipment” of a Subpart OOO affected source to which 40 C.F.R. § 63.1402 and, consequently, Subpart UU applies includes: each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in organic HAP service, and any control devices or systems required by

the equipment leak provisions of Subpart OOO, which contains 5 weight-percent HAP or greater and operates 300 hours per year or more. 40 C.F.R. §§ 63.1402(b) and 63.1410.

29. With certain exceptions not applicable here, new affected sources under Subpart OOO were required to be in compliance with Subpart OOO upon initial start-up or January 20, 2000, whichever is later. 40 C.F.R. § 63.1401(a)

**C. Polyether Polyols NESHAP – Part 63, Subpart PPP**

30. Pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d), EPA promulgated on June 1, 1999 the NESHAP for Polyether Polyols Production at 40 C.F.R. Part 63, Subpart PPP (64 Fed. Reg. 29439). This is commonly referred to as “Subpart PPP.”

31. The “affected source” to which Subpart PPP applies is, for existing sources, defined as the group of one or more polyether polyol manufacturing process units (PMPUs), and associated equipment and that is located at a plant that is a major source as defined in 40 C.F.R. § 63.2.

32. “PMPU” means a process unit that manufactures a polyether polyol as its primary product, or a process unit designated as a polyether polyol in accordance with 40 C.F.R. § 63.1420(e)(2). 40 C.F.R. § 63.1423. A PMPU consists of more than one unit operation. *Id.* This collection of equipment includes purification systems, reactors and their associated product separators and recovery devices, distillation units and their associated distillate receivers and recovery devices, other associated unit operations, storage vessels, surge control vessels, bottoms receivers, product transfer racks, connected ducts and piping, combustion, recovery, or recapture devices or systems, and the equipment (i.e., all pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and

instrumentation systems that are associated with the PMPU) that are subject to Subpart PPP's equipment leak provisions as specified in Section 63.1434. *Id.*

33. The "associated equipment" of PMPUs identified in 40 C.F.R. § 63.1420(a)(2) as part of the affected source under Subpart PPP include the emissions points and equipment of: waste management units; maintenance wastewater; heat exchange systems; equipment required or utilized as a method of compliance with Subpart PPP which may include control techniques and recovery devices; product finishing operations; and feed or catalyst operations. 40 C.F.R. § 63.1420(a)(2).

34. Subpart PPP establishes standards for, among other things, process vents, 40 C.F.R. §§ 63.1424 – 63.1431; wastewater, *id.* Section 63.1433; and equipment leaks, *id.* Section 63.1434.

35. Under Subpart PPP, affected sources that do not meet certain criteria for new affected sources are deemed to be "existing affected sources." 40 C.F.R. § 63.1420(a)(2). Under 40 C.F.R. § 63.1422(c), existing affected sources subject to Subpart PPP must comply with the requirements of Subpart PPP, including 40 C.F.R. § 63.1433(a), by no later than June 1, 2002.

36. With respect to wastewater and equipment leak provisions under Subpart PPP, the wastewater provisions of Subpart PPP under 40 C.F.R. § 63.1433 and the equipment leak provisions of Subpart PPP under 40 C.F.R. § 63.1434 each refer to and incorporate the respective requirements for wastewater and equipment leaks under the National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry. These standards commonly are referred to as the "Hazardous Organic NESHAP" or the "HON."

37. Pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d), EPA promulgated the HON. 59 Fed. Reg. 19402 (Apr. 22, 1994). Of relevance to this CAFO, the HON includes standards for wastewater under 40 C.F.R. Part 63, Subpart G (“Subpart G”) and standards for equipment leaks under 40 C.F.R. Part 63, Subpart H (“Subpart H”).

38. Subpart G sets forth, among other things, requirements for owners or operators to determine whether subject process wastewater streams are “Group 1” or “Group 2” wastewater streams and to meet HAP emission control requirements for those process wastewater streams designated as Group 1. 40 C.F.R. § 63.132.

39. Like Subpart UU, Subpart H sets forth LDAR requirements to ensure that any leaks of organic HAPs from equipment are timely detected and repaired. 40 C.F.R. §§ 63.160 – 63.183.

40. The “equipment” to which Subpart H applies includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or closed-vent systems required by Subpart H that are intended to operate in organic HAP service 300 hours or more during the calendar year within a source subject to the provisions of a specific Subpart in 40 C.F.R. Part 63 that references Subpart H. 40 C.F.R. § 63.160.

41. “In organic HAP service” means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5% by weight of total organic HAPs. 40 C.F.R. §§ 63.161 and 63.1423(b).

42. EPA is authorized under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), to enforce Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under 40 C.F.R. Part 63.

43. The Administrator of EPA (the Administrator) may assess a civil penalty for violation of the CAA of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 through January 12, 2009 and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

44. The Administrator may assess a penalty greater than \$295,000 where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19.

45. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than \$295,000 is appropriate for an administrative penalty action.

46. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

47. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

**Factual Allegations and Alleged Violations**

48. BASF owns and operates a chemical plant at its Wyandotte, Michigan facility (Facility).

49. BASF was and/or is a “person” within the meaning of Sections 113(b) and 302(c) of the CAA, 42 U.S.C. §§ 7413(b) and 7602(c), and the “owner or operator,” as defined in Section 112(a)(9) of the CAA, 42 U.S.C. § 7419(a)(9), of plants and processes at the Facility.

50. The plants and process that BASF owned and/or owns or operated and/or operates at the Facility include a building, structure, facility, or installation that emits or may emit any air pollutant.

51. The plants or processes that BASF owned and/or owns or operated and/or operate at the Facility include “stationary sources” within the meaning of Section 112(a)(3) of the CAA, 42 U.S.C. § 7412(a)(3).

52. At the time of promulgation of Subparts OOO and PPP, the plants and processes that BASF owned and/or owns or operated and/or operates at the Facility were a group of stationary sources located within a contiguous area and under common control that emit or have the potential to emit considering controls, in the aggregate, 10 tons per year of more than any HAP or 25 tons per year or more of any combination of HAPs.

53. Up until January 8, 2007, the plants and processes that BASF owned and/or owns or operated and/or operates at the Facility were a “major source” within the meaning of Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1) and 40 C.F.R. § 63.2:

54. Effective with the issuance of its Renewable Operating Permit Number MI-ROP-B4359-2003b on January 8, 2007, the Facility obtained a federally enforceable limit on its potential to emit and became a synthetic minor source (area source) of HAPs. However, because the Facility was considered a major source of HAPs at the time of the initial compliance dates of Subparts OOO and PPP, respectively, the Facility is still subject to Subparts OOO and PPP.

55. On or around July 31, 2004, BASF began operating a process unit at the Facility that manufactured amino resins (Amino Resins Process Unit). BASF operated the Amino Resins Process Unit until April 2008. BASF ceased operating the Amino Resins Process Unit in April 2008 and has not operated the unit since that date.

56. The Amino Resins Process Unit was a “new affected source” under Subpart OOO, as defined under 40 C.F.R. § 63.1400(d).

57. BASF was required to operate the Amino Resins Process Unit in compliance with Subpart OOO upon initial start-up. 40 C.F.R. § 63.1401(a).

58. BASF has and continues to operate a process unit at the Facility that manufactures polyether polyols (Polyether Polyols Process Unit).

59. The Polyether Polyols Process Unit is an “existing affected source” under Subpart PPP, as defined under 40 C.F.R. § 63.1420(a)(2).

60. BASF was required to operate the Polyether Polyols Process Unit in compliance with Subpart PPP by June 1, 2002.

**Count I—Amino Resins Process Unit:**

**Failure to Determine Applicability and Demonstrate Initial Compliance  
with Process Vent Standards for the Methanol Recovery  
Distillation Column Process Vent**

61. Complainant incorporates paragraphs 48 through 57 of this CAFO, as if set forth in this paragraph.

62. Subpart OOO includes HAP emission control standards for, *inter alia*, continuous process vents. 40 C.F.R. § 63.1405. To comply with these standards, an owner or operator must determine the applicability of control requirements to each continuous process vent within an affected source. 40 C.F.R. § 63.1412. An owner or operator must then demonstrate initial compliance with these standards. 40 C.F.R. § 63.1413.

63. Under 40 C.F.R. § 63.1405(a) of Subpart OOO, for each continuous process vent located at a new affected source with a Total Resources Effectiveness (TRE) less than or equal to 1.2, the owner or operator shall comply with the HAP control requirements specified under this paragraph. The procedure for calculating an affected source's TRE index value for purposes of determining applicability of a continuous process vent is provided under 40 C.F.R. § 63.1412(j).

64. Subpart OOO at 40 C.F.R. § 63.1417(e)(1) requires the owner or operator of an affected source to submit a report known as the Notification of Compliance Status (NCS) report. In this report, the owner or operator is required to provide the results of all applicability determinations, performance tests, design evaluations, inspections, continuous monitoring system performance evaluations, and any other information, as appropriate, required to be included in the NCS under, among other things Section 63.1416(f)(1) through (3) for continuous process vents.

65. Under 40 C.F.R. § 63.1416(f)(1), the owner or operator of an affected source shall, for each continuous process vent, maintain records of measurements, engineering assessments, and calculations performed according to the procedures of Section 63.1412(j) to determine the TRE index value. Documentation of engineering assessments, described in Section 63.1412(k), shall include all data, assumptions, and procedures used for the engineering assessments.

66. At the time of the operation of the Amino Resins Process Unit, there was a process component known as the "Methanol Recovery Distillation Column." The distillation column operated continuously with a reflux condenser and a tail condenser which vented to atmosphere.

67. The Methanol Recovery Distillation Column was a "process vent," as that term is defined at 40 C.F.R. § 63.1412(j).

68. The Methanol Recovery Distillation Column was a "continuous process vent," as that term is defined at 40 C.F.R. § 63.1412(j).

69. On February 25, 2005, BASF submitted an NCS Report for the Amino Resins Process Unit.

70. BASF failed in its NCS Report to identify the methanol recovery distillation column in the Amino Resins Process Unit as a continuous process vent subject to the requirements of 40 C.F.R. § 63.1405(a). BASF further failed, with respect to the methanol recovery distillation column, to calculate a TRE index value to determine whether the control requirements of 40 C.F.R. § 63.1405 applied and, consequently, failed to keep a record of such TRE index value calculation, as required by 40 C.F.R. § 63.1416(f)(1).

71. The failures by BASF described in the preceding paragraph are in violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart OOO at 40 C.F.R. §§ 63.1405, 63.1412, 63.1413, 1416(f)(1), and 63.1417(e)(1).

**Count II—Amino Resins Process Unit:**

**Failure to Conduct Initial Compliance Demonstrations  
for Condensers Operating as Control Devices**

72. Complainant incorporates paragraphs 48 through 57 of this CAFO, as if set forth in this paragraph.

73. Subpart OOO includes HAP emission control standards for, *inter alia*, batch process vents. 40 C.F.R. §§ 63.1406 through 63.1408.

74. Subpart OOO at 40 C.F.R. § 63.1413(e) provides the initial and continuous compliance demonstration requirements for batch process vents that would include either conducting a performance test or a design evaluation on any control devices used to demonstrate compliance with Subpart OOO's emission standards.

75. Among the Amino Resins Process Unit's batch process vents subject to control requirements under Subpart OOO during its operation were process vents from Vessels RX-102 and RX-103.

76. At the time of the Amino Resin Process Unit's operation, Vessels RX-102 and RX-103 each had one condenser; E101B and E100, respectively.

77. The condensers E101B and E100 each functioned as and constituted a "control device" as that term is defined under 40 C.F.R. § 63.1402.

78. BASF did not conduct either a design evaluation or performance test on condensers E101B and E100 at any time during the operation of the Amino Resin Process Unit.

79. BASF failed to conduct a design evaluation or performance test on condensers operating as control devices in the Amino Resins Process Unit, in violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart OOO at 40 C.F.R. § 63.1413(e).

**Count III – Amino Resins Process Unit:**

**Failure to Perform Parametric Monitoring of Condensers  
Operating as Control Devices**

80. Complainant incorporates paragraphs 48 through 57 and 73 through 77 of this CAFO, as if set forth in this paragraph.

81. Subpart OOO at 40 C.F.R. § 63.1415(a) requires the owner or operator of an affected source that uses a control device to comply with Subpart OOO and has one or more parameter monitoring level requirement specified under Subpart OOO shall install and operate monitoring equipment specified under Section 63.1415(b).

82. Subpart OOO at 40 C.F.R. § 63.1415(b) states that the monitoring equipment specified in paragraphs (b)(1) through (8) of this section shall be installed as specified in paragraph (a) of this section, and the parameters to be monitored are specified in Table 3 of Subpart OOO.

83. Table 3 of Subpart OOO states that the parameter to be monitored for condensers is the exit (product side) temperature and that continuous records of this parameter are to be kept in accordance with 40 C.F.R. § 63.1416(d).

84. Subpart OOO at 40 C.F.R. § 63.1415(b)(3) states that where a condenser is used as a control device, a condenser exit temperature (product side) monitoring device equipped with a continuous recorder is required.

85. BASF failed to install monitoring equipment for condensers E101B and E100, conduct any parametric monitoring of these condensers, and keep records of required operating parameters, in violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart OOO at 40 C.F.R. §§ 63.1415(a) and (b), and 63.1416(d).

**Count IV—Amino Resins Process Unit:**

**Failure to Meet NESHAP Requirements to Properly Evaluate HAP Emissions Episodes**

86. Complainant incorporates paragraphs 48 through 57, 64, and 69 of this CAFO, as if set forth in this paragraph.

87. Subpart OOO provides options for owners or operators to comply with Subpart OOO's emission standards for batch process vents, among which is compliance with an organic HAP emissions weight percent reduction standard. 40 C.F.R. §§ 63.1406(a) (reactor batch vent) and 63.1407(a) (non-reactor batch vent).

88. At the time of operation of the Amino Resins Process Unit, BASF opted to comply with Subpart OOO's percent reduction standards for the Amino Resins Process Unit, for its three reactor batch process vents and one non-reactor batch process vent, as reported in BASF's February 25, 2005 NCS Report.

89. Subpart OOO at 40 C.F.R. § 63.1413(e)(1) states that owners or operators opting to comply with the percent reduction standards specified in 40 C.F.R. §§ 63.1406(a) and 63.1407(a) shall select portions of the batch process vent emissions (*i.e.*, select batch emission episodes or portions of batch emission episodes) to be controlled such that the specified percent reduction is achieved for the batch cycle. Paragraphs (e)(1)(i) and (ii) of this Section specify how the performance of a control device or control technology is to be determined. Paragraph (e)(1)(iii) of this section specifies how to demonstrate that the required percent emission reduction is achieved for the batch cycle.

90. In lieu of direct measurement to estimate organic HAP emissions from batch emission episodes, Subpart OOO at 40 C.F.R. § 63.1414(d)(6) provides that the owner or operator may, upon approval, use an engineering assessment to estimate the organic HAP

emissions from such episode. Such engineering assessment must meet the criteria specified under Section 63.1414(d)(6).

91. In its February 25, 2005 NCS Report, BASF submitted its engineering assessment calculations conducted pursuant to 40 C.F.R. §§ 63.1413(e)(1) and 63.1414(d)(6) to demonstrate compliance with the batch vent percent reduction standards of Subpart OOO.

BASF's engineering assessment relied upon certain assumptions that were not representative of operating conditions, and thus failed to meet the criteria for proper engineering assessments under 40 C.F.R. § 63.1414(d)(6). Consequently, BASF failed to comply with Subpart OOO's compliance demonstration requirements under 40 C.F.R. § 63.1413(e)(1).

92. BASF's deficient engineering assessment for demonstrating compliance with Subpart OOO's batch vent emission standards constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart OOO at 40 C.F.R. §§ 63.1413(e)(1) and 63.1414(d)(6).

**Count V—Amino Resins Process Unit:**  
**Failure to Conduct LDAR Monitoring in Accordance with Method 21**

93. Complainant incorporates paragraphs 48 through 57 of this CAFO, as if set forth in this paragraph.

94. Subpart OOO at 40 C.F.R. § 63.1410 states that the owner or operator of each affected source shall comply with the requirements of 40 C.F.R. Part 63, Subpart UU (national emission standards for equipment leaks (control level 2)) for all equipment, as defined under § 63.1402, that contains or contacts 5 weight-percent HAP or greater and operates 300 hours per year or more.

95. Subpart UU (in its own right and as referred to and incorporated into Subpart OOO) generally requires owners and operators to monitor equipment for leaks. With certain

alternatives and exceptions not relevant here, an owner or operator subject to Subpart UU is required to monitor valves and connectors in gas/vapor and light liquid service by the method specified in 40 C.F.R. § 63.1023(b). 40 C.F.R. § 63.1025 (valves); § 63.1027 (connectors).

96. Throughout its operation, the Amino Resins Process Unit was subject to Subpart UU.

97. Subpart UU at 40 C.F.R. § 63.1023(b) states that instrument monitoring, as required under this subpart, shall comply with the requirements specified in paragraphs (b)(1) through (b)(6) of this section.

98. Subpart UU at 40 C.F.R. § 63.1023(b)(1) states that the monitoring shall comply with Method 21 of 40 C.F.R. Part 60, Appendix A ("Method 21") except as otherwise provided in this section.

99. Method 21, at 40 C.F.R. Part 60, Appendix A-7, Meth. 21, Section 8.3.1, requires the owner or operator of an affected source to do as follows:

Place the probe inlet [of the portable instrument that is capable of detecting emissions from equipment] at the surface of the component interface where leakage could occur. Move the probe along the interface periphery while observing the instrument readout. If an increased meter reading is observed, slowly sample the interface where leakage is indicated until the maximum meter reading is obtained. Leave the probe inlet at this maximum reading location for approximately two times the instrument response time. If the maximum observed meter reading is greater than the leak definition in the applicable regulation, record and report the results [as a leaking component].

With certain exceptions and alternatives not relevant here, BASF was required to monitor subject valves and connectors of the Amino Resins Process Unit using Method 21 in accordance with the monitoring frequency schedules established in 40 C.F.R. § 63.1025(b)(3) (valves) and § 63.1027(b)(3) (connectors).

100. For the period of August 2004 through March 2008, BASF failed to conduct LDAR monitoring in accordance with Method 21 for subject valves and connectors within the

Amino Resins Process Unit in violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart OOO at 40 C.F.R. § 7412, and its implementing regulations under Subpart OOO at 40 C.F.R. § 63.1410 and Subpart UU at 40 C.F.R. § 63.1023(b).

**Count VI—Amino Resins Process Unit:**

**Failure to Equip Open-ended Lines with a Closure Device**

101. Complainant incorporates paragraphs 48 through 57, 94, and 96 of this CAFO, as if set forth in this paragraph.

102. With certain exceptions not relevant here, Subpart UU at 40 C.F.R. § 63.1033(b) provides that the owner or operator shall equip each open-ended valve or line with a cap, blind flange, plug, or a second valve that shall seal the open end.

103. In March 2008, BASF failed to equip two open-ended valves or lines with a cap, blind flange, plug, or second valve in the Amino Resins Process Unit.

104. The failures by BASF described in the preceding paragraph are in violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart OOO at 40 C.F.R. § 63.1410 and Subpart UU at 40 C.F.R. § 63.1033(b).

**Count VII—Amino Resins Process Unit:**

**Failure to Conduct Monthly Inspection of Pumps**

105. Complainant incorporates paragraphs 48 through 57, 94, and 96 of this CAFO, as if set forth in this paragraph.

106. Under Subpart UU, BASF was required to monitor on a monthly basis all pumps in light liquid service in the Amino Resins Process Unit subject to Subpart OOO leak requirements using Method 21. 40 C.F.R. § 63.1026(b).

107. For the months of January and March 2006, BASF failed to conduct Method 21 monitoring of 12 pumps in light liquid service in the Amino Resins Process Unit subject to Subpart OOO leak requirements.

108. The failures by BASF described in the preceding paragraph are in violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart OOO at 40 C.F.R. § 63.1410 and Subpart UU at 40 C.F.R. § 63.1026(b).

**Count VIII—Polyether Polyols Process Unit:**

**Failure to Conduct a Timely Proper Performance Test  
of the Thermal Oxidizer**

109. Complaint incorporates paragraphs 48 through 54 and 58 through 60 of this CAFO, as if set forth in this paragraph.

110. Subpart PPP provides at 40 C.F.R. § 63.1424 that an owner or operator of an affected source shall comply with the HAP control requirements of, among other things, Sections 63.1425 through 63.1430 for process vents.

111. Subpart PPP at 40 C.F.R. § 63.1425(b) establishes HAP emission control requirements for existing affected sources using epoxides in the production of polyether polyols. Section 63.1425(b) provides certain options to meet the HAP emission control requirements, including maintaining an outlet concentration of total epoxides or total organic compounds after each combustion, recapture, or recovery device of 20 ppmv or less. 40 C.F.R. § 63.1425(b)(iii).

112. Pursuant to 40 C.F.R. § 63.1439(e)(5), BASF submitted a NCS Report for Subpart PPP compliance dated October 29, 2002. In this NCS Report, BASF indicated it had chosen to comply with epoxide affected source emission requirements under the option specified under 40 C.F.R. § 63.1425(b)(iii).

113. Subpart PPP, at 40 C.F.R. § 63.1426(c), states that an owner or operator using a combustion, recovery, or recapture device to comply with emission control requirements specified in Section 63.1425(b) shall conduct a performance test using the applicable procedures in paragraphs (c)(1) through (4) of Section 63.1426(c). Subpart PPP at 40 C.F.R. § 63.1426(c)(3)(i) specifies the testing conditions that must occur during the performance test.

114. In December 2001, BASF conducted performance testing on the thermal incinerator that BASF relies upon to meet the emission standards of 40 C.F.R. § 63.1425(b) for the Polyether Polyols Process Unit. BASF failed to conduct this performance test in accordance with the specified testing conditions under 40 C.F.R. § 63.1426(c)(3)(i).

115. Subsequent to the 2001 performance test, BASF did not conduct a performance test of the thermal oxidizer servicing the Polyether Polyols Process Unit that fully complied with 40 C.F.R. § 63.1426(c) until a second performance test was conducted in December 2010.

116. For the period from 2001 to 2010, BASF failed to conduct proper performance testing on the thermal oxidizer servicing the Polyether Polyols Process Unit in violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart PPP at 40 C.F.R. § 63.1426(c).

**Count IX—Polyether Polyols Process Unit:**

**Failure to Determine the Group Status of Wastewater Streams**

117. Complainant incorporates paragraphs 48 through 54 and 58 through 60 of this CAFO, as if set forth in this paragraph.

118. Subpart PPP includes control standards for, among other things, wastewater. 40 C.F.R. § 63.1433(a). Under Subpart PPP, affected sources are required to comply with the

wastewater standards found in Subpart G at 40 C.F.R. §§ 63.132 through 63.147 for each process wastewater stream originating at an affected source. 40 C.F.R. § 63.1433(a).

119. Subpart PPP at 40 C.F.R. § 63.1423 defines “process wastewater” as wastewater that, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. Examples are product tank drawdown or feed tank drawdown; water formed during a chemical reaction or used as a reactant; water used to wash impurities from organic products or reactants; equipment washes between batches in a batch process; water used to cool or quench organic vapor streams through direct contact; and condensed steam from jet ejector systems pulling vacuum on vessels containing organics.

120. Subpart G classifies wastewater streams into two categories: Group 1 and Group 2. 40 C.F.R. § 63.132(c). Group 1 wastewater streams are subject to specified HAP emission reduction requirements under 40 C.F.R. §§ 63.132 through 63.137. 40 C.F.R. § 63.132(a)(2). Group 2 wastewater streams must comply with the applicable recordkeeping and reporting requirements specified in 40 C.F.R. §§ 63.146 and 63.147 of Subpart G. 40 C.F.R. § 63.132(a)(3).

121. Subpart G at 40 C.F.R. § 63.132(a) requires the owner or operator to determine whether each process wastewater stream at a subject process unit is subject to “Group 1” or “Group 2” requirements under Subpart G.

122. Under Subpart PPP at 40 C.F.R. § 63.1439(e)(5), existing affected sources must submit a NCS Report which includes, among other things, identification of the group status of all process wastewater streams subject to the HON as required under 40 C.F.R. § 63.146.

123. BASF submitted to EPA a NCS Report pursuant to Subpart PPP, dated October 29, 2002, which identified 11 process wastewater stream Points of Determination (PODs) for its Polyether Polyols Process Unit. BASF indicated in the NCS report that it made a determination under 40 C.F.R. § 63.132(a)(1) that all 11 of these PODs are "Group 2" wastewater streams under the HON.

124. On March 2, 2009, EPA issued a request for information pursuant to Section 114 of the CAA, 42 U.S.C. § 7414. EPA requested that BASF identify all PODs for process wastewater streams for the Polyether Polyols Process Unit.

125. Based on BASF's response to EPA's March 2009 information request, dated April 3, 2009, BASF had 10 PODs associated with the Polyether Polyols Process Unit that were subject to group status determination requirements in addition to the 11 PODs identified in its October 29, 2002, NCS report to EPA. The additional identified PODs included the following:

- a. D-151B: #7 vacuum system separator;
- b. D-408: #9 initiator K.O. pot;
- c. D-405D: #9 reactor K.O. pot;
- d. D-150A: #8 jet decanter drain tank;
- e. D-530: #8 initiator K.O. pot;
- f. D-150B: # 8 vacuum system separator;
- g. S-530DB: #9 initiator vacuum system separator;
- h. S-405DB: #9 reactor vacuum system separator;
- i. TK 150: # 7 and #8 jets condensate;
- j. TK 151: #9 jet condensate collection tank.

126. BASF did not conduct process wastewater sampling for use in the determination of the group status of the TK 150 and TK 151 PODs until August 2008.

127. BASF did not conduct process wastewater sampling for use in the determination of group status for the remainder of the PODs it identified in its April 2009 response until on or after October 20, 2008.

128. In February 2010, BASF identified to EPA two additional PODs it had not previously identified as subject to wastewater group status determination requirements, D-151-A and D-702. BASF identified these PODs as Group 1 streams.

129. BASF failed to timely determine and report to EPA process wastewater group status determination of 12 PODs associated with the Polyether Polyols Process Unit in violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart PPP at 40 C.F.R. §§ 63.1433(a) and 63.1439(e)(5) and Subpart G at 40 C.F.R. § 63.132(a).

**Count X—Polyether Polyols Process Unit:**

**Failure to Control Group 1 Wastewater Streams**

130. Complainant incorporates paragraphs 48 through 54, 58 through 60, 118 through 120, 124 through 125, and 127 through 128 of this CAFO, as if set forth in this paragraph.

131. After BASF determined that D-151-B (#7 vacuum system separator) of the Polyether Polyols Process Unit was a POD subject to group status determination requirements under Subpart G, BASF conducted several rounds of wastewater sampling for D-151-B from October 2008 through September 2010, the aggregate results of which demonstrated that D-151-B constituted a Group 1 wastewater stream under 40 C.F.R. § 63.132(c) of Subpart G.

132. Previous to September 2010, BASF had not complied with Group 1 wastewater requirements for POD D-151-B pursuant to 40 C.F.R. § 63.132(a)(2)

133. Previous to BASF's notification to EPA that it had identified PODs D-151-A and D-702 as Group I wastewater streams, BASF had not complied with Group I wastewater requirements for PODs D-151-A and D-702.

134. BASF failed to timely implement or meet Group I control requirements for the wastewater streams generated from D-151-B, D-151-A, and D-702 PODs in violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart PPP at 40 C.F.R. §§ 63.1433(a) and Subpart G at 40 C.F.R. § 63.132(a)(2).

**Count XI—Polyether Polyols Process Unit:**

**Failure to Conduct Weekly Visual Pump Inspections**

135. Complainant incorporates paragraphs 48 through 54 and 58 through 60 of this CAFO, as if set forth in this paragraph.

136. Subpart PPP at 40 C.F.R. § 63.1434(a) states that the owner or operator of each affected source shall comply with the HON equipment leak requirements in 40 C.F.R. Part 63, Subpart H for all equipment in organic HAP service.

137. Subpart H at 40 C.F.R. § 63.163(b)(3) states that “[e]ach pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. If there are indications of liquids dripping from the pump seal, a leak is detected.”

138. There are 11 pumps in the Polyether Polyols Process Unit that are subject to visual inspection requirements of 40 C.F.R. § 63.163(b)(3).

139. On numerous occasions between January 2008 and January 2009, BASF failed to conduct weekly visual inspections of all 11 pumps in the Polyether Polyols Process Unit in violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart PPP at 40 C.F.R. § 63.1434(a) and Subpart H at 40 C.F.R. § 63.163(b)(3).

**Count XII—Polyether Polyols Process Unit:**

**Failure to Meet NESHAP Requirements for Weekly Visual Agitator Leak Inspection**

140. Complainant incorporates paragraphs 48 through 54, 58 through 60, and 136 of this Complaint, as if set forth in this paragraph.

141. Subpart H, at 40 C.F.R. § 63.173(b)(1) states that “[e]ach agitator shall be checked by visual inspection each calendar week for indications of liquids dripping from the agitator.”

142. Subpart H at 40 C.F.R. § 63.173(b)(2) states that “[i]f there are indications of liquids dripping from the agitator, a leak is detected.”

143. On numerous occasions between January 2005 and March 2009, BASF failed to properly conduct visual inspections of agitators within the Polyether Polyol Process Unit in violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under Subpart PPP at 40 C.F.R. § 63.1434(a) and Subpart H at 40 C.F.R. § 63.173(b).

**Civil Penalty**

144. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, Respondent’s cooperation and agreement to perform a Supplemental Environmental Project (SEP), Complainant has determined that an appropriate civil penalty to settle this action is \$788,048.

145. Within 30 days after the effective date of this CAFO, Respondent must pay a \$788,048 civil penalty by one of the following methods:

a. For checks sent by regular U.S. Postal Service mail, send a cashier’s or certified check, payable to “Treasurer, United States of America,” to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

b. For checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O. Boxes), send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must note "In the Matter of BASF Corporation, Wyandotte, Michigan", the docket number of this CAFO, and the billing document number.

c. For electronic funds transfer, make payable to "Treasurer, United States of America," and send to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state "In the Matter of BASF Corporation, Wyandotte, Michigan", the docket number of this CAFO, and the billing document number.

d. For Automated Clearinghouse (ACH) also known as REX or remittance express, make payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state "In the Matter of BASF Corporation, Wyandotte, Michigan," the docket number of this CAFO, and the billing document number.

e. For on-line payment, go to [www.pay.gov](http://www.pay.gov). Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

146. Respondent must send a notice of payment that states the case title "In the Matter of BASF Corporation, Wyandotte, Michigan", the docket number of this CAFO, and the billing document number to the Regional Hearing Clerk, Compliance Tracker, Air Enforcement and Compliance Assurance Branch, and to Mark J. Palermo at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Mark J. Palermo (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

147. This civil penalty is not deductible for federal tax purposes.

148. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 163, below, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

149. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

#### **Supplemental Environment Project**

150. Summary. Respondent shall perform a SEP at a total cost of \$250,000 to fund and ensure implementation of a program to retrofit in-service diesel vehicles with emission reduction technology further described in Paragraph 153, below, designed to reduce the emissions of particulates, HAPs, and/or ozone precursors (the "Diesel Emissions Reduction Project"). Respondent expects that the Diesel Emissions Reduction Project will encompass vehicles owned and operated by the City of Westland, the City of Dearborn and/or the Detroit Water and Sewerage District, all of which are located within Wayne County.

151. Covered Vehicles and Geographic Scope. The Diesel Emissions Reduction Project shall involve fleets of diesel buses (school, intra-city, or inter-city buses) or diesel vehicles contracted for public use, located and operating within Wayne County, Michigan.

152. Project Cost. Respondent must spend \$250,000 for the purchase and installation of emission control equipment for in-service diesel vehicles belonging to the fleets identified in paragraph 151 above. Respondent may utilize a third-party to assist in the implementation of the Diesel Emissions Reduction Project. Respondent expects to complete the SEP by contracting with Southwest Detroit Environmental Vision, a non-profit organization that is experienced in arranging diesel retro-fit projects for emission reduction purposes. Respondent retains the option of selecting a different third-party. Such third-party may assess administrative costs not to exceed 10% of the total project value (i.e., not to exceed 10 % of 250,000). Such third party costs shall be considered as project costs for purpose of the \$250,000 commitment.

153. For the purpose of implementation of the Diesel Emissions Reduction Project, Emission Control Equipment shall consist of one of the technologies currently verified by EPA for diesel retrofits, as shown at <http://epa.gov/cleandiesel/verification/verif-list.htm>, or the CARB verification list at <http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm>, or EPA's SmartWay idle reduction verification list at <http://www.epa.gov/smartway/technology/index.htm> and/or repower eligible vehicles/equipment with EPA-certified diesel engine configurations that meet the most recent emission standards for those engine configurations. Emission Control Equipment includes, but is not limited to, direct-fired heater equipment, diesel oxidation catalysts, diesel particulate filters, or closed crankcase ventilation systems, but nonetheless the Emission Control Equipment must be verified by EPA or CARB as indicated above. All such Emission Control Equipment shall result in the reduction of emissions of particulates, HAPs,

and/or ozone precursors diesel particulate emissions. Respondent shall ensure that any old diesel engine configurations replaced under the Diesel Emissions Reduction Project will be disposed so that they cannot be resold or reused.

154. Project Completion Date. Completion of the retrofits under the Diesel Emissions Reduction Project totaling \$250,000 must occur by no later than 365 days after the Effective Date of this CAFO. In its sole discretion, EPA may grant additional time to complete the SEP.

155. Respondent shall ensure completion of the diesel retrofits to be conducted under the Diesel Project. Confirmation will be obtained from the fund recipients or the entities undertaking the actions, confirming that one or more of Emission Control Equipment technologies identified under Paragraph 153 of this CAFO was installed on the selected fleet or fleets, or portions thereof.

156. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

157. Respondent certifies under penalty of law that it would have agreed to perform a comparably valued, alternative project other than a diesel emissions reduction Supplemental Environmental Project, if the Agency were precluded by law from accepting a diesel emissions reduction Supplemental Environmental Project.

158. Respondent must submit a SEP Completion Report to EPA by no later than 420 days from the Effective Date of this CAFO, unless an extension of time is provided by EPA in its sole discretion. This report shall contain the following information:

- a. Detailed description of the Diesel Emissions Reduction Project as completed;

- b. Description of any operating problems and the actions taken to correct the problems;
- c. For each diesel retro-fit under the Diesel Emission Reduction Project, provide the following: (1) Vehicle owner with contact name, address, and phone number; (2) Vehicle type (i.e., mass-transit bus, etc.); (3) Model year; (4) Engine manufacturer; (5) Engine size (horsepower); (6) actual, or if not known, estimated or projected, annual miles or hours of operation; (7) Retrofit type (e.g., oxidation catalyst, particulate filter) and explanation how such retrofit meets the criteria of Paragraph 153 of this CAFO; (8) Retrofit cost per vehicle (separate installation costs); (9) Actual, or if not known, estimated or projected, annual fuel usage (gallons/year); (10) Actual, or if not known, estimated or projected, annual emissions reductions (PM, HC, CO); and (11) copy of invoices for purchase of retrofit equipment.
- d. Itemized cost of goods and services used to complete the Diesel Emissions Reduction Project. To the extent not already required to be provided under paragraph 158.c. above, Respondent shall provide, upon request, copies of the invoices, receipts, purchase orders, or other documentation that specifically identify and itemize the individual cost of the goods and services for which payment was made. Cancelled checks do not constitute acceptable documentation unless such checks specifically identify and itemize the individual costs of the goods and/or services for which payment is being made;
- e. Certification that Respondent has completed the SEP in compliance with this CAFO.

159. Respondent must submit all notices and reports required by this CAFO by first class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 146, above.

160. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

161. Following receipt of the SEP completion report described in paragraph 158, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 163, below.

162. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 165, below.

163. If BASF violates any requirement of this CAFO relating to the SEP, BASF must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$300,000, but Respondent will receive credit towards the penalty amount for any sums that were satisfactorily expended towards the SEP pursuant to the requirements of this CAFO.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it expended at least \$225,000, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than \$225,000, Respondent must pay a stipulated penalty in the amount of the difference between \$250,000 and amount actually spent.

- d. If Respondent did not submit timely the SEP completion report required under paragraph 165, above, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$150	1 <sup>st</sup> through 14 <sup>th</sup> day
\$200	15 <sup>th</sup> through 30 <sup>th</sup> day
\$300	31 <sup>st</sup> day and beyond

164. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

165. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 148, above, and will pay interest and nonpayment penalties on any overdue amounts.

166. Any public statement that Respondent makes referring to the SEP must represent that BASF undertook this project pursuant to a settlement with the United States Environmental Protection Agency for alleged violations of the Clean Air Act.

167. 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 the parties agree 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.

168. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

#### General Provisions

169. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

170. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

171. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state, and local laws. Except as provided in paragraph 169, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

172. Respondent certifies that it is complying fully with the NESHAP regulations under 40 C.F.R. Part 63, Subparts G, H, UU, OOO, and PPP.

173. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

174. The terms of this CAFO bind Respondent, its successors, and assigns.

175. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

176. Each party agrees to bear its own costs and attorney's fees in this action.

177. This CAFO constitutes the entire agreement between the parties.

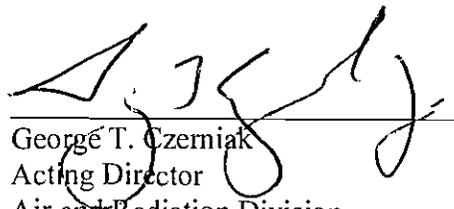
**BASF Corporation, Respondent**

June 11, 2012  
Date

  
\_\_\_\_\_  
Greg Pfum  
Vice President and General Manager,  
Wyandotte Site  
BASF Corporation

**United States Environmental Protection Agency, Complainant**

6/15/12  
Date

  
\_\_\_\_\_  
George T. Czerniak  
Acting Director  
Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 5

RECEIVED

JUN 19 2012

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

Consent Agreement and Final Order  
In the Matter of: BASF Corporation, Wyandotte, Michigan  
Docket No. CAA-05-2012-0032

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

June 15, 2012

Date



\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

In the Matter of:  
BASF, The Chemical Company  
Docket No. CAA-05-2012-0032

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order in this matter with the Regional Hearing Clerk (E-13J), United States Environmental Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that mailed by Certified Mail, Receipt No. [ ], the second original to Respondent, addressed as follows:

Greg Pflum  
Vice President and General Manager  
BASF, The Chemical Company  
1609 Biddle Avenue  
Wyandotte, Michigan 48192

and that I mailed a correct copy by first class, United States mail, addressed as follows:

Honorable Judge Biro  
United States Environmental Protection Agency  
Office of Administrative Law Judges  
Mailcode 1900L/Ariel Rios Building  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

On this 19<sup>th</sup> day of June, 2012.

  
Loretta Shaffer

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REGIONAL HEARING CLERK  
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2012 JUN 19 PM 1:34

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