



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JAN 28 2009

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

(AE-17J)

Nancy Berenson
Assistant General Counsel
Arkema Inc.
2000 Market Street, 26th Floor
Philadelphia, PA 19103

Re: In the Matter of: Arkema, Inc.
Docket No. **CAA-05-2009-0009**

Dear Ms. Berenson:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Arkema Inc., Docket No. **CAA-05-2009-0009**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on Jan 28, 2009.

Pursuant to paragraph 9 of the CAFO, Arkema, Inc., must pay the civil penalty within 30 days of Feb 27, 2009. Your check must display the case name, case docket number **CAA-05-2009-0009**, and the billing document number **2750903A010**.

Please direct any questions regarding this case to Andre Daugavietis at (312) 886-6663.

Sincerely,

Bonnie Bush, Section Chief
Air Enforcement and Compliance Assurance
(MI/WI)

Enclosure

cc: Sharon R. Newlon, Dickinson Wright PLLC
500 Woodward Ave., Suite 4000
Detroit, MI 48226

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
JAN 23 2009

In the Matter of:)
)
Arkema, Inc.)
Riverview, Michigan)
)
Respondent.)
_____)

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY
Docket No. CAA-05-2009-0009
Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

Complaint

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) 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 (2004).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois.

3. The Respondent is Arkema Inc., a corporation which at all times relevant to this matter operated a facility at 17168 West Jefferson Avenue in Riverview, Michigan (Facility). As of May 1, 2007, Respondent sold the amines business and was no longer the owner or operator of the Facility.

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) (2004).

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 entry of this CAFO and the assessment of the specified civil

penalty, and agrees to comply with the terms of the CAFO.

Statutory and Regulatory Background

7. Pursuant to Section 112(d) of the Clean Air Act, on April 22, 1994, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Equipment Leaks, 59 Fed. Reg. 19568. These regulations are codified at 40 C.F.R. Part 63, Subpart H, §§ 63.160 - 63.183.

8. Section 113(a) of the CAA, 42 U.S.C. § 7413(a), authorizes the Administrator to initiate an enforcement action whenever, among other things, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of a State Implementation Plan, permit, or any other rule promulgated, issued or approved under the CAA.

9. Per 40 C.F.R. § 63.100(b), subparts F and H apply to the owner or operator of a chemical manufacturing process unit (CMPU) that:

- (A) Manufactures as a primary product one or more of the chemicals listed in table 1 of subpart F.
- (B) Uses as a reactant or manufactures as a product, or co-product, one or more of the organic hazardous air pollutants listed in table 2 of subpart F.
- (C) Is located at a plant site that is a major source as defined in section 112(a) of the Act.

10. At the Facility, Respondent's Process 21 distilled crude alkylamines into mono-, di- and tri- alkylamines. Triethylamine is a product listed in Table 1 of subpart F with a Group IV designation. Triethylamine is also a reactant listed in Table 2 of subpart F. Therefore, subparts F and H applied to Process 21. Other processes at the plant may also have been regulated under 40 C.F.R. §§ 63.160-63.183, including Process 47. This CAFO covers the alleged Leak

alleged Leak Detection and Repair (LDAR) violations identified by EPA at Process 47 and Process 21 during the time the plant was being operated by Arkema.

11. The NESHAP, at 40 C.F.R. § 63.160(a), states that the provisions of this subpart apply to 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 this subpart that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR part 63 that references this subpart.

12. The NESHAP, at 40 C.F.R. § 63.168(b)(1), states that valves shall be monitored to detect leaks by the method specified in § 63.180(b) of this subpart.

13. The NESHAP, at 40 C.F.R. § 63.174 (a)(1), states the connectors shall be monitored to detect leaks by the method specified in § 63.180(b) of this subpart.

14. The NESHAP, at 40 C.F.R. § 63.163(b)(1), states that the owner or operator of a process unit subject to this subpart shall monitor each pump monthly to detect leaks by the method specified in § 63.180(b) of this subpart.

15. The NESHAP, at 40 C.F.R. § 63.180(b)(1), states that monitoring shall comply with Method 21 of 40 CFR part 60, appendix A.

16. EPA Reference Method 21, at Section 8.3.1, requires as follows: "The probe is to be placed at the inlet of 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 specified in the regulation reporting requirements.”

17. The NESHAP, at 40 C.F.R. 63.167(a)(1), states that each “open-ended” valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in §63.162(b) of this subpart and paragraphs (d) and (e) of this section.

18. The NESHAP, at 40 C.F.R. 63.163(c)(2), states that a first attempt at repair shall be made no later than 5 calendar days after the pump leak is detected.

19. The NESHAP, at 40 C.F.R. 63.163(c)(1), states that when a pump leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected.

20. The NESHAP, at 40 C.F.R. 63.168(f)(2), states that a first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

21. The NESHAP, at 40 C.F.R. 63.168(f)(1), states that when a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected.

22. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for emission violations that occurred between January 31, 1997 and March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for emission violations that occurred on and after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended at 69 Fed. Reg. 7121 (February 13, 2004).

23. 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.

24. 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 violation alleged in this complaint.

General Allegations

25. Respondent is a "person" as defined at Section 302 (e) of the Clean Air Act, 42 U.S.C. § 7602(e).

26. During all times relevant to this matter, Respondent owned and operated a chemical manufacturing process unit at the Facility.

27. On October 25 through 28, 2004, EPA conducted an inspection at the Facility for compliance with the NESHAP for Equipment Leaks.

Count I

28. Complainant incorporates paragraphs 1 through 27 of the Complaint, as if set forth in this paragraph.

29. EPA determined that Respondent failed to monitor correctly in accordance with EPA Reference Method 21 for valves, connectors, and pumps at the Facility.

30. EPA determined that Respondent failed to equip nine open-ended valves or lines at the Facility with a cap, blind flange, plug, or second valve per § 63.167(a)(1).

31. EPA determined that Respondent failed to make a first attempt at repair on certain valve and pump leaks at the Facility per § 63.168(f)(2) and § 63.163(c)(2) , respectively.

32. EPA determined that Respondent failed to make a final attempt at repair on certain valve and pump leaks at the Facility per § 63.168(f)(1) and § 63.163(c)(1), respectively.

33. On June 24, 2005, EPA issued a Notice and Finding of Violation (NFOV) to Respondent regarding violations described herein. On August 10, 2005, EPA and Respondent held a conference to discuss the NFOV.

Consent Agreement and Final Order

1. Complainant, the Director of the Air and Radiation Division, U. S. Environmental Protection Agency, Region 5, brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complaint, set forth above, alleges that Respondent violated Section 112 of the Act, 42 U.S.C. § 7412, and the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Equipment Leaks, at 40 C.F.R. 63 Subpart H at the Facility.

Stipulations

3. Respondent admits the jurisdictional allegations in this Complaint and CAFO, and neither admits nor denies the factual or legal allegations in the Complaint.

4. 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 Complaint and CAFO, and its right to appeal this Complaint and CAFO under Section 113(d) of the Act, 42 U.S.C. § 7413(d), or otherwise.

5. Respondent certifies that it has ceased operations at the Facility by May 1, 2007, and that therefore compliance with the standards set forth above is no longer possible for Respondent at the Facility. Arkema indicates that it addressed the alleged deficiencies during and promptly after the inspection, and promptly and voluntarily developed and implemented an enhanced LDAR program in coordination with its third party LDAR contractor and implemented supplemental employee training, and that, in addition, the former Arkema Facility became a minor source of HAPs in connection with process changes/shutdowns after the inspection and

before the sale, resulting in a Title V permit amendment from the Michigan Department of Environmental Quality for a synthetic minor source of HAPs. Accordingly, Arkema indicates that during Arkema's ownership of the facility, most of the HAPs emissions were eliminated, and that the potential for environmental impact was substantially reduced.

6. Between June 2005 and July 2008, EPA and Respondent exchanged and reviewed information regarding the alleged violations and response actions.

7. Respondent cooperated fully and in good faith with EPA during and after the inspection to resolve this matter.

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

Civil Penalty

9. Based upon an evaluation of the facts alleged in this complaint, the factors in Section 113(e) of the Act, EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991, including Appendix 6, Volatile Hazardous Air Pollutant Civil Penalty Policy (dated March 2, 1988), Respondent's co-operation and good faith in taking steps to comply with the applicable LDAR program requirements and resolving this matter, EPA has determined that an appropriate civil penalty to settle the violations alleged herein is \$170,000.

10. Complainant agrees to this penalty figure based on the best information available to Complainant at this time.

11. Complainant has determined the penalty amount in part based on information submitted to EPA by Respondent.

12. Respondent shall pay the civil penalty referenced above, by electronic funds transfer, payable to the "Treasurer, United States of America" within thirty (30) days of the

effective date of this CAFO. Respondent shall transfer electronic funds, payable to "Treasurer, United States of America," to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 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 the case title, the docket number of this CAFO and the billing document number (the billing document number will be in the cover letter to the finalized CAFO).

13. A transmittal letter stating the Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the transmittal to:

Attn: Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 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 Blvd.
Chicago, IL 60604

Andre Daugavietis, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

15. If Respondent does not timely pay the civil penalty, EPA may bring an action to

collect any unpaid portion of the penalty with interest, handling charges, 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.

16. Pursuant to 31 C.F.R. § 901.9, 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. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). 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.

General Provisions

17. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Complaint set forth above.

18. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law for matters not resolved hereunder.

19. If Respondent fails to comply with any provision contained in this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO.

20. This CAFO does not affect Respondent's responsibility to comply with the Act and

other applicable federal, state, and local laws. Except as provided in paragraph 17., above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

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

22. Each party agrees to bear its own cost and attorneys’ fees in this action.

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

24. This CAFO shall terminate upon payment of the required penalty amount as set forth above.

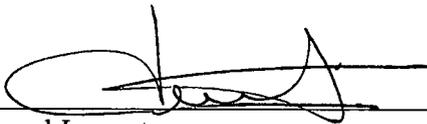
25. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

**CONSENT AGREEMENT AND FINAL ORDER
ARKEMA INC.**

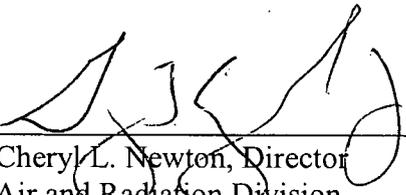
Arkema, Inc., Respondent

01/14/09
Date


Bernard Leconte
Sr. Vice President Manufacturing and Regulatory
Services
Arkema Inc.
2000 Market Street
Philadelphia, PA 19103

United States Environmental Protection Agency, Complainant

1/23/09
Date


Cheryl L. Newton, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

In the Matter of:
Arkema, Inc.
Docket No. CAA-05-2009-0009

RECEIVED
JAN 28 2009

Final Order

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This Final Order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

1-26-09
Date


Acting Regional Administrator
United States Environmental Protection Agency
Region 5

In the Matter of:
Arkema, Inc.
Docket No. CAA-05-2009-0009

RECEIVED
JAN 23 2009

Certificate of Service

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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:

Nancy Berenson
Assistant General Counsel
Arkema Inc.
2000 Market Street, 26th Floor
Philadelphia, PA 19103

and

Sharon R. Newlon
Dickinson Wright PLLC
500 Woodward Ave., Suite 4000
Detroit, Michigan 48226

and that I delivered a correct copy by intra-office mail, addressed as follows:

Marcy Toney, Regional Judicial Officer (C-14J)
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

On this 28 day of January 2009.



Tracy Jamison
Office Automation Clerk
Air Enforcement and Compliance Assurance
(MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0186 1795

CAA LDAR Method 21 Case Against Arkema, Inc., Riverview, Michigan, Settled With Complaint/CAFO

On *, 2008, Region 5 filed a combination Complaint/Consent Agreement and Final Order simultaneously initiating and resolving an administrative compliance action under Section 113(a) of the Clean Air Act against Respondent Arkema, Inc. at its Riverview, Michigan facility, at which the company produced various chemical products which made the processing equipment subject to the requirements of Subpart H of the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Equipment Leaks at 40 C.F.R. Part 63. Section 63.180(b) of the regulations requires that monitoring comply with EPA Reference Method 21.

During an October 2004 Region 5 inspection at the facility, EPA conducted LDAR monitoring on some of the process equipment. EPA staff detected leaks which were then confirmed by the company's regular LDAR contractor (a "leak" is defined as an instrument reading of 500 ppm or greater). The Region found that the leaks represent a significantly higher percentage of leaks than were detected in previous monitoring events by Respondent, and alleged that the Company had failed to correctly monitor in accordance with Method 21 during previous LDAR monitoring events. The complaint alleges that: a) Respondent failed to monitor correctly in accordance with EPA Reference Method 21 for valves, connectors, and pumps; b) failed to equip nine open-ended valves or lines at the Facility with a cap, blind flange, plug, or second valve per § 63.167(a)(1); c) failed to make a first attempt at repair on certain valve and pump leaks at the Facility per § 63.168(f)(2) and § 63.163(c)(2), respectively; and d) failed to make a final attempt at repair on certain valve and pump leaks at the Facility per § 63.168(f)(1) and § 63.163(c)(1), respectively.

The Company agreed to take steps to ensure future compliance with Method 21, as well as to implement an enhanced monitoring program under which the facility would: perform more frequent monitoring than required under the regulations; utilize a monitoring device equipped with a data logger (which automatically records the emission levels detected at each component and the date and time that each sample is taken); implement a reduced leak repair action level standard (below the regulatory leak definition) for valves, connectors, and pumps; evaluate upgrading leaking components to utilize improved technology, or environmentally enhanced alternatives; evaluate upgrading leaking or even non-leaking pumps (to eliminate the need for monitoring these components and to reduce fugitive emissions from them); evaluate more aggressive repair alternatives; perform a root cause analysis on leaking components; develop a maintenance and corrective action program; and provide the Region with reports on the results of the enhanced monitoring program. However, before the enhanced program could be formalized, the company ceased operations at the facility in 2007.

The Region obtained a waiver from DOJ in order to bring the case administratively. The CAFO provides for a civil penalty in the amount of \$170,000 for the violations alleged.

Contact: Andre Daugavietis, Associate Regional Counsel (312) 886-6663, Constantinos Loukeris (312) 353-6198.