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

JUN 17 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Larry Fioritto
Plant Manager
Perstorp Polyols, Inc.
600 Matzinger Road
Toledo, Ohio 43612

Dear Mr. Fioritto:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Perstorp Polyols, Inc. - CAA05 2015 0036. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on June 17, 2015.

Pursuant to paragraph 87 of the CAFO, Perstorp Polyols, Inc. must pay the civil penalty within 30 days of July 17, 2015. Your electronic funds transfer must display the case name and the docket number **CAA-05-2015-0036**.

Please direct any questions regarding this case to Kathleen Schnieders at (312) 353-8912.

Sincerely,

Sarah Marshall
Section Chief MI/WI Section
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5

Enclosure

cc: Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Kathleen Schnieders/C-14J
Kurt Bezeau, Ohio Environmental Protection Agency

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
RECEIVED
JUN 17 2015
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No.** **CAA-05-2015-0036**
Perstorp Polyols, Inc.	)	**Proceeding to Assess a Civil Penalty**
Toledo, Ohio,	)	**Under Section 113(d) of the Clean Air Act,**
	)	**42 U.S.C. § 7413(d)**
Respondent.	)	
	)	

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 (the 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 Perstorp Polyols, Inc. (Perstorp), a corporation doing business in Ohio.

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

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. Pursuant to Section 112(b) of the CAA, 42 U.S.C. § 7412(b), EPA designates hazardous air pollutants (HAP) which present or may present a threat of adverse effects to human health or the environment.

11. Section 112(a) of the CAA, 42 U.S.C. § 7412(b), defines "major source" 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 (tpy) or more of any combination of HAP.

12. Section 112(c) of the CAA, 42 U.S.C. § 7412(c), requires EPA to publish a list of categories of sources which EPA finds present a threat of adverse effects to human health or the environment due to emissions of HAP, and to promulgate emission standards for each source category. These standards are known as "national emission standards for hazardous air pollutants" or "NESHAP." EPA codifies these requirements at 40 C.F.R. Parts 61 and 63.

13. The NESHAPs are national technology-based performance standards for HAP sources in each category that become effective on a specified date. The purpose of these

standards is to ensure that all sources achieve the maximum degree of reduction in emissions of HAP that EPA determines is achievable for each source category.

14. Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3), and 40 C.F.R. §§ 61.05 and 63.4, prohibit the owner or operator of any source from operating such source in violation of any NESHAP applicable to such source.

15. The NESHAP, at 40 C.F.R. Part 63, Subpart A, contains general provisions applicable to the owner or operator of any stationary source that contains an affected facility subject to the NESHAP at Part 63. These include definitions at 40 C.F.R. § 63.2.

16. The NESHAP, at 40 C.F.R. § 63.2, defines "existing source" as any affected source that is not a new source.

17. The NESHAP, at 40 C.F.R. § 63.2, defines "new source" as any affected source the construction or reconstruction of which is commenced after EPA first proposes a relevant emission standard under 40 C.F.R. Part 63 establishing an emission standard applicable to such source.

18. The NESHAP, at 40 C.F.R. § 63.2, defines "fugitive emissions" as those emissions from a stationary source that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Under Section 112 of the CAA, all fugitive emissions are to be considered in determining whether a stationary source is a major source.

19. The NESHAP, at 40 C.F.R. § 63.2, defines "hazardous air pollutants" as any air pollutant listed in or pursuant to Section 112(b) of the CAA.

20. On November 10, 2003, EPA promulgated the NESHAP for Miscellaneous Organic Chemical Manufacturing (MON), codified at 40 C.F.R. Part 63, Subpart FFFF.

68 Fed. Reg. 63888. The NESHAP for MON establishes emission standards, requirements to demonstrate initial and continuous compliance with emission limits, operating limits, work practice standards, and recordkeeping requirements associated with miscellaneous organic chemical manufacturing. See 40 C.F.R. § 63.2430.

21. The NESHAP for MON, at 40 C.F.R. § 63.2445(b), provides that owners and operators of existing sources subject to the MON must comply with the requirements for existing sources no later than May 10, 2008.

22. The NESHAP for MON, at 40 C.F.R. § 63.2435(a), provides that owners and operators are subject to the MON if they operate miscellaneous organic chemical manufacturing process units (MCPU) that are located at, or are part of, a major source of HAP emissions as defined in Section 112(a) of the CAA.

23. The NESHAP for MON, at 40 C.F.R. § 63.2550, defines "miscellaneous organic chemical manufacturing process" as all equipment which collectively functions to produce a product or isolated intermediate that is "material" as described in 40 C.F.R. § 63.2435(b). Process equipment includes any, all, or a combination, of reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment which is used to produce a product or isolated intermediate.

24. The NESHAP for MON, at 40 C.F.R. § 63.2435(b), provides that a MCPU includes equipment necessary to operate a miscellaneous organic chemical manufacturing process that, among other things, processes, uses, or generates any of the organic HAPs listed in Section 112(b) of the CAA. A MCPU also includes any assigned storage tanks and transfer racks; equipment in open systems that is used to convey or store water having the same concentration and flow characteristics as wastewater; and components such as pumps,

compressors, agitators, pressure relief devices, sampling connection systems, open ended valves or lines, valves, connectors, and instrumentation systems that are used to manufacture any material or family, including but not limited to an organic chemical with an SIC code listed in 40 C.F.R.

§ 63.2435(b)(1)(i).

25. The NESHAP for MON, at 40 C.F.R. § 63.2550, defines "in organic HAP service" to mean a piece of equipment that either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of total organic as determined according to Method 18 of 40 C.F.R. Part 60, Appendix A. See also 40 C.F.R. § 63.180(d)(1).

26. On April 22, 1994, EPA promulgated the following NESHAP:

a. National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) at 40 C.F.R. Part 63, Subpart F (59 Fed. Reg. 19454);
b. National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater at 40 C.F.R. Part 63, Subpart G (59 Fed. Reg. 19468); and
c. National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks at 40 C.F.R. Part 63, Subpart H (59 Fed. Reg. 19568).

These standards are collectively known as the Hazardous Organic NESHAP (HON).

27. 40 C.F.R. § 63.113(a) states the owner or operator of a Group 1 process vent as defined in this subpart shall comply with the requirements of paragraph (a)(1), (2), or (3) of this section. The owner or operator who transfers a gas stream that has the characteristics specified in 40 C.F.R. § 63.107 (b) through (h) or meets the criteria specified in 40 C.F.R. § 63.107(i) to an off-site location or an on-site location not owned or operated by the owner or operator of the source for disposal shall comply with the requirements of paragraph (i) of this section.

28. 40 C.F.R. § 60.615(c)(2) states that each owner or operator of a catalytic incinerator, shall record all 3-hour periods of operation during which the average temperature of the vent stream immediately before the catalyst bed is more than 28°C (50°F) below the average temperature of the vent stream during the most recent performance test at which compliance with 40 C.F.R. § 60.612(a) was determined. The owner or operator also shall record all 3-hour periods of operation during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference of the device during the most recent performance test at which compliance with 40 C.F.R. § 60.612(a) was determined.

29. 40 C.F.R. § 63.113(a)(2) states that the owner or operator of a Group 1 process vent shall reduce emissions of total organic hazardous air pollutants by 98 weight-percent or to a concentration of 20 parts per million by volume, whichever is less stringent. For combustion devices, the emission reduction or concentration shall be calculated on a dry basis, corrected to 3-percent oxygen, and compliance can be determined by measuring either organic hazardous air pollutants or total organic carbon using the procedures in 40 C.F.R. § 63.116 of this subpart.

30. 40 C.F.R. § 63.119(a), Subpart G, states that for each storage vessel to which this subpart applies, the owner or operator shall comply with the control technology requirements of paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section according to the schedule provisions of 40 C.F.R. § 63.100 of Subpart F of this part.

31. 40 C.F.R. § 63.122(a), Subpart G, states that for each Group 1 storage vessel, the owner or operator shall comply with the reporting requirements of paragraphs (a)(1) through (a)(5) of this section.

32. 40 C.F.R. § 63.123(a), Subpart G, states that each owner or operator of a Group 1 or Group 2 storage vessel shall keep readily accessible records showing the dimensions of the

storage vessel and an analysis showing the capacity of the storage vessel. This record shall be kept as long as the storage vessel retains Group 1 or Group 2 status and is in operation. For each Group 2 storage vessel, the owner or operator is not required to comply with any other provisions of 40 C.F.R. §§ 63.119 through 63.123 of this subpart other than those required by this paragraph unless such vessel is part of an emissions average as described in 40 C.F.R. § 63.150 of this subpart.

33. 40 C.F.R.§ 63.160, Subpart H, sets applicability and designation 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.

34. 40 C.F.R. § 63.161, Subpart H, defines "equipment" as each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, surge control vessel, bottoms receiver, and instrumentation system in organic hazardous air pollutant service; and any control devices or systems required by this subpart.

35. 40 C.F.R. § 63.162(c), Subpart H, states that each piece of equipment in a process unit to which this subpart applies shall be identified such that it can be distinguished readily from equipment that is not subject to this subpart. Identification of the equipment does not require physical tagging of the equipment. For example, the equipment may be identified on a plant site plan, in log entries, or by designation of process unit boundaries by some form of weatherproof identification.

36. 40 C.F.R. § 63.162(d), Subpart H, states that equipment that is in vacuum service is excluded from the requirements of this subpart.

37. 40 C.F.R. § 63.163(b)(1), Subpart H, states 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 40 C.F.R. § 63.180(b) of this subpart and shall comply with the requirements of paragraphs (a) through (d) of this section.

38. 40 C.F.R. § 63.168(b)(1), Subpart H, states that the owner or operator shall monitor all valves to detect leaks by the method specified in 40 C.F.R. § 63.180(b) of this subpart.

39. 40 C.F.R. § 63.168(e)(1), Subpart H, states that percent leaking valves at a process unit shall be determined by the equation in this subparagraph.

40. 40 C.F.R. § 63.172(f)(1)(i), Subpart H, states that each closed closed-vent system shall have an initial inspection conducted according to the procedures in paragraph (g) of this section.

41. 40 C.F.R. § 63.172(f)(1)(ii), Subpart H, states that each closed closed-vent system shall have an annual visual inspection for visible, audible, or olfactory indications of leaks.

42. 40 C.F.R. § 63.173(a)(1), Subpart H, states that each agitator shall be monitored monthly to detect leaks by the methods specified in § 63.180(b) of this subpart, except as provided in 40 C.F.R. § 63.162(b) of this subpart.

43. 40 C.F.R. § 63.173(b)(1) states that each agitator shall be checked by visual inspection each calendar week for indications of liquids dripping from the agitator.

44. 40 C.F.R. § 63.174(a)(1), Subpart H, states connectors shall be monitored to detect leaks by the method specified in 40 C.F.R. § 63.180(b) of this subpart.

45. 40 C.F.R. § 63.174(i)(1), Subpart H, states for use in determining the monitoring frequency, as specified in paragraph (b) of this section, the percent leaking connectors shall be initially calculated as specified in paragraphs (i)(1).

46. 40 C.F.R. § 63.174(i)(2), Subpart H, states for use in determining the monitoring frequency, as specified in paragraph (b) of this section, the percent leaking connectors shall be calculated as specified in paragraphs (i)(2) of this section for all subsequent monitoring events after the initial monitoring.

47. 40 C.F.R. § 63.180(b)(1), Subpart H, states that monitoring, as required under this subpart, shall comply with Method 21 of 40 CFR Part 60, Appendix A.

48. 40 C.F.R. Part 60, Appendix A, states that Method 21 is "applicable for the determination of volatile organic compound (VOC) leaks from process equipment. These sources include, but are not limited to, valves, flanges and other connections, pumps and compressors, pressure relief devices, process drains, opened-ended valves, pumps and compressor deals systems degassing vents, accumulator vessel vents, agitator deals, and access door seals."

49. 40 C.F.R. § 63.180(b)(4), Subpart H, states that a zero gas and mixtures of methane in air at the concentrations specified in paragraphs (b)(4)(ii)(A) through (b)(4)(ii)(C) of this section are to be used as the calibration gases. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (b)(2)(i) of this section.

50. Table 5 of Subpart G states that for vessels having a capacity between 75 and 151 cubic meters (19,813 and 39,890 gallons), and a vapor pressure of at least 13.1 kilopascals, the vessel is a Group1 storage vessel.

51. Under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating the NESHAP regulations. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

52. The Administrator of EPA may require any person who owns or operates an emission source to make reports; install, use and maintain monitoring equipment; sample emissions; and provide information required by the Administrator under Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). The Administrator has delegated this authority to the Director of the Air and Radiation Division.

53. The Administrator of EPA (the Administrator) may assess a civil penalty 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.

54. 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.

55. 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

56. Perstorp owns and operates a facility located at 600 Matzinger Road, Toledo, Ohio 43612.

57. Perstorp processes and manufactures industrial organic chemicals at the facility.

58. Perstorp operated under Title V Permit Number P0103993, reissued by the Ohio Environmental Protection Agency (OEPA) February 8, 2011.

59. On January 1, 2006, November 29, 2006, and June 19, 2007, EPA issued Section 114 Information Requests to Perstorp.

60. On November 13, 2013, EPA conducted an inspection at the facility (EPA Inspection).

61. Perstorp operates three process units, Penta Plant, TMP, and Formox, that are subject to the HON.

62. During the EPA Inspection, Perstorp personnel stated that they did not have any closed-vent systems for Penta Plant, TMP, or Formox process units.

63. During the EPA Inspection, based on the process description provided by the Perstorp personnel, each process has a closed-vent system as defined by 40 C.F.R. Part 63, Subpart H.

64. On December 6, 2013, Perstorp submitted a letter to EPA following EPA's November 13, 2013, inspection (December 2013 Letter).

65. In the December 2013 Letter, Perstorp included two spreadsheets containing inlet and differential temperatures for each of the catalytic incinerators (Penta Plant/TMP and Formox) at the site as well as indicating when the periods of time the temperatures were out of compliance.

66. In the December 2013 Letter, Perstorp indicated that two acetaldehyde storage vessels (V-130A and V-130B) that previously were not considered Group 1 storage vessels per the HON, now meet the criteria in Table 5 of the HON for Group 1 storage vessels.

67. Perstorp manufactures sulfonated melamine formaldehyde (SMF) in the SMF process unit.

68. The SMF process uses formaldehyde and other chemicals to manufacture SMF.

69. Formaldehyde is a HAP as defined at 40 C.F.R. § 63.2, 42 U.S.C. §7412(b).

70. SMF is an organic chemical classified using the 1987 version of SIC code 282, 283, 284, 285, 286, 287, 289, or 386.

71. SMF is an organic chemical classified using the 1997 version of NAICS code 325.

72. Perstorp is a "major source" for HAP.

73. Perstorp owns and operates equipment that is considered an affected source under Subpart H.

74. EPA issued a Finding of Violation (FOV) to Perstorp on March 31, 2014, alleging that Perstorp violated the requirements in paragraphs 75-85.

75. Identifying each agitator listed below, for at least the period of December 2001 through December 6, 2013, in the Formox, SMF, Penta Plant, and TMP process units, as required by 40 C.F.R. § 63.162(c):

a. A-510 (Formox/SMF);
b. A-520 (Formox/SMF);
c. A-530 (Formox/SMF);
d. A-1100 (Formox/SMF);
e. A-200 (Penta); and
f. A-250 (TMP).

76. Monitoring each agitator listed in paragraph 75 monthly, for at least the period of December 2001 through December 6, 2013, to detect leaks by the methods specified in 40 C.F.R. § 63.180(b), as required by 40 C.F.R. § 63.173(a)(1).

77. Checking each agitator listed in paragraph 75 weekly, for at least the period of December 2001 through December 6, 2013, for indications of liquids dripping from the agitator, as required by 40 C.F.R. § 63.173(b)(1).

78. Identifying each closed vent system, for at least the period of December 2001 through December 6, 2013, in the Formox, SMF, Penta Plant, and TMP process units, as required by 40 C.F.R. § 63.162(c).

79. Inspecting each closed vent system, for at least the period of December 2001 through December 6, 2013, using the procedures in 40 C.F.R. § 63.172(g), as required by 40 C.F.R. § 63.172(f)(1)(i).

80. Inspecting each closed vent system annually, after the initial inspection, for visible, audible, or olfactory indication of leaks for at least the period of December 2002 through December 6, 2013, as required by 40 C.F.R. § 63.172(f)(1)(ii).

81. Conducting Method 21 of 40 C.F.R. Part 60, Appendix A, properly on valves, connectors, and pumps, for at least the period of December 2001 through the present, by using an improper calibration gas (i.e. isobutylene) as well as a calibration gas at a concentration (100 parts per million) below the leak concentration of valves, connectors, and pumps, as required by 40 C.F.R. §§ 63.180(b)(4), 63.163(b)(1), 63.168(b)(1), and 63.174(a)(1).

82. Identifying two acetaldehyde storage tanks as Group 1 storage tanks for at least the period of September 22, 1994, through the present, as required by 40 C.F.R. §§ 63.119(a), 63.122(a), and 63.123(a).

83. Properly calculating the percent leaking valves and connectors, for least the period of December 2001 through the present, by including valves and connectors in vacuum service, as required by 40 C.F.R. §§ 63.168(e)(1), 63.162(d), 63.174(i)(1), and 63.174(i)(2).

84. Complying with the requirements of the NESHAP for MON by May 10, 2008, which includes emission standards, operating limits, work practice standards, recordkeeping and reporting requirements, for the SMF process, as required by 40 C.F.R. Part 63, Subpart FFFF and Section 112 of the CAA, 42 U.S.C. § 7412.

85. Complying with the Group 1 process vent provisions for the Formaldehyde, Penta Plant, and TMP process units and corresponding catalytic incinerators on the certain dates, as required by 40 C.F.R. §§ 63.113(a)(2), 60.615(c)(2), and Conditions C.3.c.4, C.4.c.4, C.5.c.2, and C.5.c.4 of Title V Permit Number P0103993.

86. In response to the FOV, EPA and Perstorp had a Section 113 conference on May 6, 2014. Both during and following this conference, Perstorp provided EPA with information and documentation of actions taken by Perstorp to correct the issue identified in the FOV.

Civil Penalty

87. 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, cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is $56,250. Within 30 days after the effective date of this CAFO, Respondent must pay a $56,250 civil penalty by electronic funds transfer, 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 Respondent's name, the docket number of this CAFO.

88. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

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

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

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

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

90. If Respondent does not pay timely the civil penalty, 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 CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

91. 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

92. Respondent shall complete a supplemental environmental project (SEP) designed to protect the environment and public health by installing a second catalytic incinerator which will serve as the primary incinerator for the Penta Plant at Perstorp's facility and the backup incinerator for Perstorp's TMP Plant. This new catalytic incinerator will provide redundancy to Perstorp's emission control system, increase Perstorp's operational flexibility, and decrease the variability in organic loads being treated at its facility.

93. Respondent shall complete the SEP within sixteen (16) months of the effective date of this CAFO. A scope of work for the SEP and implementation schedule, with milestones, is contained in Exhibit A.

94. Respondent must spend at least $210,000 for the implementation of the SEP.

95. Respondent must continuously use or operate the incinerator installed as the SEP when operating the Penta Plant, subject to repair and maintenance for two (2) years following the incinerator's date of installation and start up, or as long as Respondent operates the Penta Plant, whichever is shorter.

96. Respondent certifies as follows:

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 that it is signing 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.

Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that Respondent is signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

97. EPA may inspect Respondent's records at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

98. Respondent must submit a SEP completion report to EPA no later than three (3) months after the SEP completion date. This report must contain the following information:

a. Detailed description of the SEP as completed;

b. Description of any operating problems and the actions taken to correct the problems;

c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;

d. Certification that Respondent has completed the SEP in compliance with this CAFO; and

e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

99. 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 88, above.

100. 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.

101. Following receipt of the SEP completion report described in paragraph 98, 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 103.

102. 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 103, below.

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

a. Except as provided in subparagraphs b and c, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of $210,000.

b. Where Respondent has not satisfactorily completed the SEP, but can demonstrate that it partially completed the SEP and achieved some of the expected health benefits, Respondent will receive a credit against the amount in subparagraph a, above, for any sums that were expended pursuant to terms of this CAFO.

c. 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 spent at least 90 percent of the amount set forth in paragraph 94, Respondent will not be liable for any stipulated penalty under subparagraph a, above.

d. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 94, Respondent must pay a penalty of $30,000.

e. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

Penalty per violation per day	Period of violation
$100	1st through 14th day
$200	15th through 30th day
$400	31st day and beyond

104. 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. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

105. Respondent must pay any stipulated penalties within 30 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 87, above, and will pay interest and nonpayment penalties on any overdue amounts.

106. Any public statement that Respondent makes referring to the SEP must include the following language: "Perstorp undertook this project under the settlement of the United

States Environmental Protection Agency's enforcement action against it for violations of the Clean Air Act."

107. 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 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.

108. 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

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

110. The effect of the settlement described in paragraph 109, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraphs 56-86 of this CAFO.

111. 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.

112. 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 109, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

113. Respondent certifies that it is complying fully with the Clean Air Act.

114. 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).

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

116. 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.

117. Each party agrees to bear its own costs and attorneys fees in this action.

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

Perstorp Polyols, Inc. Respondent

May 11, 2015
Date

Larry Fioritto
Site Manager
Perstorp Polyols, Inc.

United States Environmental Protection Agency, Complainant

6/11/15
Date

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

Consent Agreement and Final Order
In the Matter of: Perstorp Polyols, Inc.
Docket No.
CAA-05-2015-0036

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.

12 June 2015
Date

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

CAA-05-2015-0036

Exhibit A

Perstorp

U.S. EPA Supplemental Environmental Project
Penta Catalytic Incinerator Project Scope and Preliminary Schedule

Step	Description	Status / Planned Completion Date
1	Concept developed, presented to Global EHS Challenge committee	Approved for pre-study October 2014
2	Pre-study – identify and evaluate options for emission control system	Completed November 2014
3	Present Pre-Study to Global EHS Challenge committee – internal review process	April 2015
4	Basic engineering – evaluate and determine appropriate location and finalize cost for equipment and installation to write investment application	July 2015
5	Approval of Basic Engineering and investment application - internal review process	September 2015
6	Detailed engineering and procurement – Finalize engineering of equipment and installation. Procurement of equipment (current estimate 14 weeks after approval of engineering drawings).	January 2016
7	Installation (in conjunction with a scheduled shutdown after winter)	April 2016
8	Commissioning and tuning	April - May 2016
9	Testing	June 2016

Perstorp Polyols Inc.
600 Matzinger Road Toledo, OH 43612-2695 419-729-5448 Fax 419-729-3291

In the Matter of: Perstorp Polyols, Inc.
Docket Number: **CAA-05-2015-0036**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on June 17, 2015, this day in the following manner to the addressees:

Copy by Certified Mail
Return-Receipt Requested:

Larry Fioritto
Plant Manager
Perstorp Polyols, Inc.
600 Matzinger Road
Toledo, Ohio 43612

Copy by E-mail to
Complainant:

Kathleen Schnieders
Schnieders.kathleen@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: June 17, 2015

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 4598