FILED

2013 SEP 12 PM 3:38

REGIONAL HEARING CLERK
EPA REGION VI

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
BEFORE THE ADMINISTRATOR

In the Matter of:	§	
	§	
INVISTA, S.à r.l.	§	EPA Docket No.
Orange, Texas	§	CAA-06-2013- 3310
	§	
	§	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division, on behalf of the United States Environmental Protection Agency ("EPA"), Region 6 ("Complainant"), and INVISTA, S.à r.l. ("Respondent") in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order ("CAFO").

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to sections 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, as amended ("Act" or "CAA"), 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and § 22.34.

2. For purposes of this proceeding, Respondent admits only the jurisdictional allegations contained herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. Respondent explicitly waives any right to contest the allegations and its right appeal the proposed Final Order set forth herein.

4. Compliance with all the terms and conditions of this CAFO shall resolve those causes of action alleged in this CAFO.

5. Respondent consents to the issuance of this CAFO and agrees to pay the civil penalty set forth in Paragraph 29 of this CAFO according to one of the payment methods set forth in Paragraph 30 of this CAFO.

II. COMPLAINANT'S ALLEGATIONS

Complainant EPA alleges as follows:

6. Respondent is a corporation authorized to do business in the State of Texas.

7. Respondent owns the INVISTA – Orange Site, a Nylon intermediate manufacturing plant at 3055A F.M. 1006, Orange, Texas 77630 ("Facility").

8. The Respondent produces, processes, handles and/or stores hydrogen cyanide as part of its Adiponitrile (ADN) Unit. Adiponitrile is manufactured by reacting butadiene with hydrogen cyanide to form Pentenenitrile, which is reacted with additional hydrogen cyanide to produce the Adiponitrile. The hydrogen cyanide is processed at the facility via reaction of natural gas, ammonia and air in the presence of precious metal catalyst at high temperature.

Release 1 (October 10, 2012)

9. On October 10, 2012, the Facility was performing a line break activity during clearing of the hydrogen cyanide equipment for scheduled maintenance work during a turnaround. Respondent's employees isolated the work area, and employees of a contractor then performed the work activity.

10. The work involved the removal of two blind flanges on a line in hydrogen cyanide service to connect a temporary line to the cooling water system to flush the hydrogen cyanide pump tank with water.

11. When breaking the second of the two hydrogen cyanide blind flanges, hydrogen cyanide vapor was released.

12. The isolation valve upstream of the blind that leaked locked in a partially open position, resulting in the hydrogen cyanide vapor release.

13. Respondent determined that the contributing causes include the failure of the contractor to independently verify the isolation procedure and to verify that the isolation valve was closed, and the lack of a restricted area during the work activity.

14. Respondent determined that access to the area was not controlled where line breaking activities were taking place in advance of the commencement of the work, which allowed workers not associated with the work activity to be present in the work area.

15. Two workers suffered minor injuries as a result of the release.

Release 2 (December 1, 2012)

16. On December 1, 2012 INVISTA in Orange, TX had a release of an estimated 20 pounds of hydrogen cyanide.

17. The release occurred when hydrogen cyanide leaked during the start-up of certain process equipment, through out-of-service process equipment to the atmosphere.

18. The release may have impacted on-site fauna as four dead Grackles, birds that are covered by the Migratory Bird Treaty Act, were discovered near the area of the release.

19. Pursuant to section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), an owner/operator of a stationary source producing, processing, handling or storing substances listed pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, has a general duty, in the same manner and to the same extent as section 654 of Title 29, to: (1) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (2) design and maintain a safe facility, taking such steps as are necessary to prevent releases; and (3) minimize the consequences of accidental releases that do occur.

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

21. The Facility is a "stationary source" as that term is defined by section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

22. Respondent is the "owner or operator" as those terms are defined by section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.

23. At the Facility, Respondent produces, processes, handles, or stores substances listed in, or pursuant to, CAA § 112(r)(3) or other extremely hazardous substances identified as such due to toxicity, reactivity, flammability, volatility, or corrosivity.

24. Complainant alleges that the releases of hydrogen cyanide at the Facility on October 10, 2012 and on December 1, 2012 each constituted an "accidental release" as that term is defined by section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

25. Complainant alleges that Respondent failed to design and maintain a safe facility and did not take such necessary steps to prevent accidental releases on October

10, 2012 and December 1, 2012, by not fully utilizing available and accepted practices to ensure safety with respect to the October 10, 2012 event by not fully and completely implementing lock-out tag-out procedures.

26. Complainant alleges that, with respect to the October 10, 2012 event, Respondent failed to minimize the consequences of the accidental release that did occur by not restricting access to an area where line-breaking activities were taking place, allowing workers to potentially be exposed to hydrogen cyanide.

27. Complainant alleges that the facts it recites in paragraphs 9 through 26 above constitute violations of the general duty clause in section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

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

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

29. Pursuant to the authority granted in sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and taking into consideration the size of the Respondent's business, the economic impact of the penalty on the Respondent's business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of penalties previously assessed for the same violation (if any), the economic benefit of noncompliance, and the seriousness of the violation, as well as other factors which justice may require, EPA and

Respondent agree that Respondent shall pay a civil penalty of **sixty-three thousand dollars ($63,000)** to resolve the two violations alleged in this matter.

30. Respondent shall pay the assessed penalty within thirty (30) days of the effective date of this CAFO. Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA – Region 6." Payment shall be remitted in one of three ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal Service mail, the check should be remitted to:

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

For overnight mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

PLEASE NOTE: Docket number CAA-06-2013-3310 shall be clearly typed on the check to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. If payment is made by wire service, the wire transfer instructions shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter or wire transfer instructions to the following:

Samuel Tates
Chief, Surveillance Section (6EN-AS)
Compliance Assurance and Enforcement Division
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to these instructions will ensure that proper credit is given when penalties are received by EPA.

31. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

32. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will

begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

33. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

34. The provisions of this CAFO shall apply to and be binding upon the parties to this action. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. RETENTION OF ENFORCEMENT RIGHTS

35. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal or State laws, regulations, or permitting conditions not alleged in this CAFO.

36. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

37. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations, except that EPA agrees that the payment of civil penalties as required by this CAFO resolves Respondent's liability to EPA for Federal civil penalties for the violations and facts alleged in this CAFO.

D. COSTS

38. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

E. EFFECTIVE DATE

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

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

FOR THE RESPONDENT:

9/9/2013
Date

Raul Trochez
Plant Manager

FOR THE COMPLAINANT:

9/11/2013
Date

John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 9/12/13

Ben J. Harrison
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order (CAFO) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: # 7007071000213852443

Mr. Raul Trochez
Plant Manager
INVISTA, LLC
3055A FM 1006
Orange, TX 77631

Date: Sep. 12, 2013

Sandra Hardy
U.S. EPA, Region 6
Dallas, Texas