

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
BASF Corporation	)	Docket No. CAA-06-2020-3355
602 Copper Road	)	
Freeport, Texas 77541	)	
	)	
Respondent.	)	
	)	
	)	

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

The following Administrative Compliance Order on Consent (“Consent Order”) is issued pursuant to the authority of Section 113(a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(3) (hereinafter referred to as “CAA” or “the Act”). Section 113(a)(3) of the Act authorizes the Administrator of the United States Environmental Protection Agency (“EPA”) to issue an order requiring compliance to any person whom the Administrator finds to be in violation of the Act. The authority to issue this Consent Order has been delegated to the Regional Administrator of EPA Region 6, and re-delegated to the Director of the Enforcement and Compliance Assurance Division, EPA Region 6.

STATUTORY AND REGULATORY BACKGROUND

1. The Act is designed to protect and enhance the quality of the nation’s air so as to promote public health and welfare and the productive capacity of its population. CAA § 101(b)(1), 42 U.S.C. § 7401(b)(1).

New Source Performance Standards

2. Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), requires EPA to publish and periodically revise a list of categories of stationary sources, including those categories that, in EPA’s judgment, cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

3. Once a category is included on the list, Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), requires EPA to promulgate a federal standard of performance for new sources within the category, also known as a New Source Performance Standard (“NSPS”). Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of an NSPS after the effective date of the NSPS applicable to such source.

4. The NSPS are located in Part 60 of Title 40 of the Code of Federal Regulations.

5. Pursuant to Section 111(b)(1)(B) of the Act, 42 U.S.C. § 7411(b)(1)(B), EPA has promulgated regulations that contain general provisions applicable to all NSPS sources. 40 C.F.R. Part 60, Subpart A, §§ 60.1–60.19 (“NSPS Subpart A”).

6. Under NSPS Subpart A, the provisions of 40 C.F.R. Part 60 “apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication [in Part 60] of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.” 40 C.F.R. § 60.1(a).

7. NSPS Subpart A states that “[o]wners or operators of flares used to comply with the provisions of this subpart shall monitor these control devices to ensure that they are operated and maintained in conformance with their designs.” 40 C.F.R. § 60.18(d).

8. EPA is authorized by Section 113 of the Act, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. BASF Corporation (“BASF” or “Respondent”) is a corporation doing business in the state of Texas. Respondent is a “person” within the meaning of Section 113(a) of the Act, 42 U.S.C. § 7413(a), and as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

10. At all times relevant to this Consent Order, BASF has owned and/or operated a chemical manufacturing plant at 602 Copper Road, Freeport, Texas 77541 (“the Facility”).

11. BASF is the owner and/or operator of the Facility within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2.

12. At all times relevant to this Consent Order, BASF owned and/or operated units that emit Hazardous Air Pollutants (“HAPs”) and Volatile Organic Compounds (“VOCs”) at the Facility.

13. The Facility produces organic chemicals and other specialty products that are used as raw materials in a variety of consumer products.

14. The Facility is a “stationary source” as that term is defined in Section 111(a)(3) of the Act, 42 U.S.C. § 7411(a)(3), and 40 C.F.R. § 60.2.

15. At all times relevant to this proceeding, the Facility was a “major source” within the meaning of the Act’s Title V program, Section 501(2) of the Act, 42 U.S.C. § 7661(2), and 40 C.F.R. § 70.2.

16. The Facility is subject to the CAA Title V Federal Operating Permit (“FOP”) program.

17. On or about February 27, 2004, the Texas Commission on Environmental Quality (“TCEQ”) issued BASF Permit No. O1298, an air permit issued under TCEQ’s Federal Operating Permits Program, fully approved by EPA at 66 Fed. Reg. 63,318 (December 6, 2001). The Title V Permit covers various emission units at the Facility, including Flare FL200 (“the Flare”). TCEQ renewed BASF’s Title V permit on several occasions since February 27, 2004, with the applicable renewal relevant to this Consent Order occurring on or about September 10, 2014.

18. The Flare is a steam-assisted flare.

19. At the Facility, BASF utilizes the Flare to control the emissions of waste gas from the OXO plant. The Title V permit requires, *inter alia*, that BASF operate the Flare in compliance with certain provisions of NSPS Subpart A (40 C.F.R. Part 60, Subpart A).

20. On May 19, 2016, EPA issued an Information Request regarding the Facility under Section 114 of the Act, 42 U.S.C. § 7414 (“Section 114 Request”). BASF submitted its response on July 25, 2016. As part of its response, BASF provided responsive information regarding the Facility’s flaring operations, including but not limited to assist steam flow rates and steam-to-vent gas ratios at the Flare from January 25, 2016 through May 25, 2016 (“Section 114 Request Period”).

21. EPA has conducted a comprehensive review of the data BASF submitted in response to the Section 114 Request and additional information provided by BASF thereafter.

22. The Flare is subject to 40 C.F.R. § 60.18(d). Under this regulation, BASF was and is required to monitor the Flare to ensure it is operated and maintained in conformance with its design.

23. In order to monitor a steam-assisted flare to ensure that it is operated and maintained in conformance with its design, the amount of assist steam flowing to the flare must be monitored and the flow of assist steam must be subject to sufficient control to enable increasing it or decreasing it in order to maintain a design-appropriate steam-to-vent gas ratio and high VOC combustion efficiency.

24. Based on its review of information referenced in Paragraph 20, EPA finds that during the Section 114 Request Period, BASF violated 40 C.F.R. § 60.18(d) by failing to monitor and have sufficient controls on assist steam flow at the Flare to ensure the Flare was properly operated and maintained in accordance with 40 C.F.R. § 60.18(d).

25. On August 19, 2019, BASF provided information to EPA that it has taken corrective action measures at the Facility to address compliance issues discovered by EPA's review. Specifically, BASF made efforts to reduce the set point of steam injection to the manufacturer's recommended minimum flow rate.

26. All parties to this Consent Order agree that an opportunity to confer has been satisfied in accordance with Section 113(a)(4) of the Act, 42 U.S.C. § 7413(a)(4).

27. The parties agree that in order to avoid protracted litigation, and in the best interest of all the parties and the environment, this Administrative Compliance Order will be entered into on Consent and by mutual agreement of the parties.

28. Only for the purposes of this proceeding, including any subsequent proceeding by EPA to enforce this document, BASF admits the jurisdictional allegations contained herein; however, BASF neither admits nor denies the specific findings of fact and conclusions of law contained in this Consent Order.

29. BASF also consents to and agrees not to contest EPA's jurisdiction to either issue this Consent Order or enforce its terms. Further, BASF will not contest EPA's jurisdiction to either compel compliance with this Consent Order in any subsequent enforcement proceedings, whether administrative or judicial, or require BASF's full compliance with the terms of this Consent Order or impose sanctions for violations of this Consent Order. BASF consents to the terms of this Consent Order.

ORDER ON CONSENT

30. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides in pertinent part that the Administrator may issue an Order requiring compliance with any requirement of the NSPS. Pursuant to this authority, EPA has decided to issue this Consent Order after investigating all relevant facts, taking into account BASF's compliance history and efforts made by BASF to comply with applicable regulations, and based upon the foregoing Findings of Fact and Conclusions of Law herein.

31. BASF has consented to, and is hereby ordered to satisfy, the following requirements regarding the Flare at the Facility in Freeport, Texas within one year of the Effective Date of the Consent Order:

- a. BASF shall install, operate, calibrate, and maintain a monitoring system capable of continuously measuring, calculating, and recording the volumetric flow rate of assist steam used with the Flare.
- b. BASF shall install and operate automated controls to automatically adjust the steam flow rates with changes to the vent gas flow rates at the Flare to maintain design-appropriate steam-to-vent gas ratios and high VOC combustion efficiency.

c. Upon completion of the requirements in sub-paragraphs “a.” and “b.” above, BASF shall commission or conduct an engineering study of the Flare to assess the control efficiency of VOCs during operational periods in which the vent gas flow rate is less than the set minimum steam flow rate.

1. BASF shall send a letter to EPA outlining any actions taken or improvements made, or planned actions or improvements, to ensure or improve compliance at the Flare upon completion of the engineering study.

32. At such time as BASF believes that it has complied with the terms of this Consent Order, BASF shall submit to EPA certification of compliance with Paragraph 31. The signing representative shall be fully authorized by BASF to certify that the terms and conditions of the Consent Order have been met. The certification should include the following statement:

“I certify under penalty of law that I have examined and am familiar with the information submitted in this document and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fines and imprisonment.”

33. Any information or correspondence submitted by BASF to EPA under this Consent Order shall be addressed to the following:

Justin Chen
Enforcement Officer (ECDAT)
Air Toxics Enforcement Section
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm Street, Suite #500
Dallas, Texas 75270-2102
Email: chen.justin@epa.gov

34. To the extent this Consent Order requires BASF to submit any information to EPA, BASF may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. § 2.203. EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. *See* 41 Fed. Reg. 36,902 (Sept. 1, 1976). If BASF does not assert a confidentiality claim, EPA may make the submitted information available to the public without further notice to BASF. Emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. “Emission data” is defined in 40 C.F.R. § 2.301.

GENERAL PROVISIONS

35. Pursuant to Section 113(a)(4) of the Act, 42 U.S.C. § 7413(a)(4), this Consent Order shall be effective when fully executed, as set forth below in Paragraph 54, shall not exceed a term of one year, and shall be nonrenewable.

36. The provisions of this Consent Order shall apply to and be binding upon BASF, its officers, directors, agents, and employees solely in their capacity of acting on behalf of BASF.

37. Respondent neither admits nor denies any of the factual or legal determinations made by EPA in this Consent Order.

38. The provisions of this Consent Order shall be transferable to any other party, upon sale or other disposition of the Facility. Upon such action, the provisions of this Consent Order shall then apply to and be binding upon any new owner/operator, its officers, directors, agents, employees, and any successors in interest.

39. By signing this Consent Order, the undersigned representative of BASF certifies that he or she is fully authorized by BASF to execute and enter into the terms and conditions of this Consent Order and has the legal capacity to bind BASF to the terms and conditions of this Consent Order.

40. Nothing in this Consent Order 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 compliance, penalties, or injunctive relief under any applicable Federal, State, or local laws or regulations, including the power of the EPA to undertake any action against BASF or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

41. Nothing contained in this Consent Order shall affect the responsibility of BASF to comply with all other applicable Federal, State, or local laws or regulations, including Section 303 of the Act, 42 U.S.C. § 7603.

42. EPA does not waive any rights or remedies available to EPA for any violations by BASF of Federal laws, regulations, statutes, or permitting programs.

43. Any and all information required to be maintained or submitted pursuant to this Consent Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501 *et seq.*, because it seeks to collect information from specific entities to assure compliance with this administrative action.

44. By signing this Consent Order, BASF acknowledges that this Consent Order will be available to the public and agrees that this Consent Order does not contain any confidential business information.

45. By signing this Consent Order, BASF certifies that the information it has supplied concerning this matter was at the time of submission, and is, to the best of its knowledge and belief, truthful, accurate, and complete for each submission, response, and statement. BASF acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

46. EPA and Respondent agree to the use of electronic signatures for this matter. EPA and Respondent further agree to electronic service of this Consent Order by email to the following addresses:

To EPA: tripathi.arati@epa.gov

To Respondent: christopher.witte@basf.com, linda.brenneman@basf.com,
mboyer@bdlaw.com

47. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to BASF's failure to comply with any of the requirements of this Consent Order. This Consent Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under any statutory, regulatory, or common law authority of the United States.

48. This Consent Order does not resolve any civil or criminal claims of the United States for the violations alleged in this Consent Order; nor does it limit the rights of the United States to obtain penalties or injunctive relief under the Act or other applicable federal law or regulations.

49. BASF has entered into this Consent Order in good faith without trial or adjudication of any issue of fact or law.

50. BASF waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that BASF may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review under Section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1).

51. The parties shall bear their own costs and fees in this action, including attorneys' fees.

52. For the purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Paragraph 31, sub-paragraphs a. and b., is restitution or required to come into compliance with the law.

FAILURE TO COMPLY

53. Failure to comply with this Consent Order may result in an enforcement action for appropriate injunctive relief as well as civil penalties pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b) or, in appropriate cases, criminal penalties.

EFFECTIVE DATE

54. This Consent Order shall become effective upon the later of the two signatures below.

6/15/20
Date


Ronald Barksdale
Site Services Director

6-18-2020
Date

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Administrative Compliance Order on Consent was sent this day in the following manner to the addressees:

Copy via Email to EPA:
tripathi.arati@epa.gov

Copy via Email to Respondent:
christopher.witte@basf.com, linda.brenneman@basf.com, mboyer@bdlaw.com

Date: 6-18-2020

U.S. EPA, Region 6
Dallas, Texas