

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

ARKEMA, INC.
BEAUMONT, TEXAS

RESPONDENT

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) DOCKET NO. CAA-06-2020-3320
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CONSENT AGREEMENT AND FINAL ORDER

The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and Arkema, Inc. (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 Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), 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 the purposes of this proceeding, Respondent admits the jurisdictional allegations contained herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. EPA and Respondent agree to the use of electronic signatures for this matter. EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

Complainant:

Angela Hodges Gott
hodges-gott.angela@epa.gov

Respondent:

Eric A. Tilles
eric.tilles@arkema.com

4. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein and waives all defenses which have been raised or could have been raised to the claims set forth in this CAFO.

5. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for Federal civil penalties for those violations and facts which are set forth herein.

6. Respondent consents to the issuance of this CAFO, to the assessment and payment of the civil penalty in the amount and by the method set forth in this CAFO, and to the conditions specified in this CAFO.

7. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement, to execute it, and to legally bind that party to it.

8. This CAFO shall apply to and be binding upon Respondent, its officers, directors, servants, employees, agents, authorized representatives, successors and assigns.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

9. Arkema, Inc. (Respondent) is a Delaware corporation authorized to do business in the State of Texas.

10. “Person” is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as “an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency of the United States and any officer, agent, or employee thereof.”

11. Respondent is a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

12. Respondent operates a manufacturing facility located at 2810 Gulf States Road, Beaumont, Texas 77704.

13. “Stationary source” is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3 as meaning:

any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

14. Respondent’s facility identified in Paragraph 12 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), and 40 C.F.R. § 68.3.

15. Respondent is the owner and/or operator of the stationary source identified in Paragraph 13.

16. The following substances are each a “regulated substance”, as set forth in 40 C.F.R. § 68.130:

- A. Hydrogen sulfide;
- B. Carbon disulfide;
- C. Methyl mercaptan;
- D. Propane;
- E. Acrolein; and
- F. Ethyl mercaptan.

17. “Process” is defined in 40 C.F.R. § 68.3 as meaning

any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of activities. For the purpose of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

18. Respondent has six processes at the stationary source identified in Paragraph 14:

- A. Acrolein Manufacturing;
- B. Hydrogen Sulfide Manufacturing Plant;
- C. Mercaptan BI;
- D. Mercaptan BII;
- E. Sphere Storage and Rail; and
- F. Refrigeration.

19. 40 C.F.R. § 68.130 specifies the following threshold quantities for the regulated substances listed below:

- A. Hydrogen sulfide – 10,000 pounds;
- B. Carbon disulfide – 20,000 pounds;
- C. Methyl mercaptan – 10,000 pounds;
- D. Propane – 10,000 pounds;
- E. Acrolein – 5,000 pounds; and
- F. Ethyl mercaptan – 10,000 pounds.

20. Respondent has exceeded the threshold quantity for one or more of the regulated substances listed in Paragraph 16 at each of the six processes identified in Paragraphs 18.

21. “Covered process” is defined in 40 C.F.R. § 68.3 as meaning “a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.”

22. Each of the processes identified in Paragraph 18 is a “covered process” as that term is defined by 40 C.F.R. § 68.3.

23. The covered processes identified in Paragraphs 18 are subject to the “Program 3” requirements of the Risk Management Plan (RMP) regulations and must, among other things, comply with the Program 3 Prevention Program of 40 C.F.R. Part 68, Subpart D.

24. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d), authorizes EPA to bring an administrative action for penalties that exceed \$378,852¹ and/or the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

25. EPA and the U.S. Department of Justice have jointly determined that Complainant can administratively assess a civil penalty even though the alleged violations have occurred more than twelve (12) months prior to the initiation of the administrative action.

26. On or about September 25 – 26, 2018, representatives of EPA conducted an inspection of Respondent’s facility.

27. On or about October 18, 2019, Respondent provided additional information and documentation regarding areas of concern identified in the inspection report.

¹ The maximum penalty that can be assessed (without a waiver) under Section 113 of the Clean Air Act was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$378,852.

B. VIOLATIONS

Count One – Failure to timely revalidate Process Hazard Analysis.

28. 40 C.F.R. § 68.67(f) provides that the facility must revalidate a Process Hazard Analysis (PHA) at least every five years.

29. The most recent PHA for the Acrolein Process was completed in 2016; however, the previous Acrolein Process PHA was dated 2009. Therefore, the Acrolein Process PHA was approximately two years past due when completed in 2016.

30. Therefore, Respondent violated 40 C.F.R. § 68.67(f) by failing to timely revalidate the PHA for the Acrolein Process.

Count Two – Failure to annually certify operating procedures.

31. 40 C.F.R. § 68.69(c) provides that the facility must annually certify that its operating procedures are current and accurate.

32. At the time of the inspection, Respondent's four most recent operating procedure certifications were dated July 10, 2015, October 18, 2016, December 4, 2017, and April 30, 2018; thus, Respondent twice exceeded one year when completing its certifications.

33. Therefore, Respondent violated 40 C.F.R. § 68.69(c) by failing to annually certify that its operating procedures were current and accurate.

Count Three – Failure to timely provide refresher training.

34. 40 C.F.R. § 68.71(b) provides that the facility must provide refresher training at least every three years.

35. At the time of the inspection, the inspector reviewed a sampling of employee training records and identified one employee who had not completed refresher training at least every three years and was approximately one month overdue.

36. Therefore, Respondent violated 40 C.F.R. § 68.71(b) by failing to provide refresher training at least every three years.

Count Four – Failure to conduct mechanical integrity inspections

37. 40 C.F.R. § 68.73(d) provides the following:

- (1) Inspections and tests shall be performed on process equipment.
- (2) Inspection and testing procedures shall follow recognized and generally acceptable good engineering practices.
- (3) The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.
- (4) The owner or operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

38. At the time of the inspection, Respondent's records identified 128 process equipment inspections as overdue.

39. Therefore, Respondent violated 40 C.F.R. § 68.73(d) by failing to conduct certain mechanical integrity inspections.

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

40. For the reasons set forth above, Respondent has agreed to pay a civil penalty of **TWO HUNDRED NINETY-EIGHT THOUSAND DOLLARS (\$298,000).**

41. 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 (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire

transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express 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, e.g. Fed Ex), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & 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” with a phone number of
(412) 234-4381”.

PLEASE NOTE: Docket Number CAA-06-2020-3320 shall be clearly typed on the check or other method of payment to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference Respondent’s name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference Respondent’s name and address, the case name, and docket number of the CAFO. 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:

Marie Stucky
Enforcement Officer
stucky.marie@epa.gov

Lorena Vaughn
Regional Hearing Clerk
vaughn.loreana@epa.gov

Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

42. 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.

43. If Respondent fails to submit payment within thirty (30) days of the effective date of this CAFO, Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties as set forth below.

44. 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 respective 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).

45. 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 (6%) 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.

46. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent (10%) of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

47. This CAFO is considered a "prior violation" for the purpose of demonstrating a "history of noncompliance" under the CAA Stationary Source Penalty Policy, and the Combined Enforcement Policy for CAA Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (June 2012).

B. NOTIFICATION

48. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the email addresses given (in addition to any action

specified by law or regulation), unless these individuals or their successors give notice to the other party that another individual has been designated to receive the communication:

Complainant:

Angela Hodges Gott
hodges-gott.angela@epa.gov

Respondent:

Eric A. Tilles
eric.tilles@arkema.com

C. COMPLIANCE

49. Respondent hereby certifies that as of the date of the execution of this CAFO, that it has corrected the violations alleged herein, and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

D. MODIFICATION

50. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of Complainant and Respondent, approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

E. RETENTION OF ENFORCEMENT RIGHTS

51. EPA does not waive any rights or remedies available to EPA for any other violations by Respondent of Federal or State laws, regulations, or permitting conditions.

52. Nothing in this CAFO shall relieve Respondent of the duty to comply with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

53. 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, contaminants, hazardous substances on, at or from Respondent's facility whether related to the violations addressed in this CAFO or otherwise. 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 Federal, State, or local laws or regulations.

54. Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. In any such action to enforce the provisions of this CAFO, Respondent shall not assert, and may not maintain, any defense of laches, statute of limitations, or any other equitable defense based on the passage of time. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under the CAA or its implementing regulations, or under other federal or state laws, regulations, or permit conditions.

55. In any subsequent administrative or judicial proceeding initiated by Complainant or the United States for injunctive relief, civil penalties, to enforce the provisions of this CAFO, or other appropriate relief relating to this Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims for civil penalties that have been specifically resolved pursuant to this CAFO.

56. Respondent waives any right it may possess at law or in equity to challenge the authority of the EPA or the United States to bring a civil action in a United States District Court

to compel compliance with this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action. Respondent also consents to personal jurisdiction in any action to enforce this CAFO in the appropriate Federal District Court.

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

58. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Respondent's compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. Complainant does not warrant or aver in any manner that Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of the CAA or with any provisions of Federal, State, or local laws, regulations, or permit.

F. COSTS

59. Except as provided in Paragraph 45, 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.

G. TERMINATION

60. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed.

H. EFFECTIVE DATE

61. This CAFO, and any subsequent modifications, become 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:

Date: 05/28/2020

Jeffrey McHenry  Digitally signed by Jeffrey
McHenry
Date: 2020.05.28 11:23:48 -05'00'

Arkema, Inc.

FOR THE COMPLAINANT:

Date: June 10, 2020

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division
U.S. Environmental Protection Agency, Region 6

FINAL ORDER

Pursuant to the Section 113 of the CAA, 42 U.S.C. § 7413, 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 relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. 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. 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: 6/11/2020

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Angela Hodges Gott
hodges-gott.angela@epa.gov

Copy via Email to Respondent:

Eric A. Tilles
eric.tilles@arkema.com

June 12, 2020

Date

Lorena Vaughn

Office of Regional Counsel
US EPA - Region 6