

**ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS**

IN THE MATTER OF:

Sasol Chemicals (USA) LLC,

Westlake, Louisiana

Respondent

**CONSENT AGREEMENT
AND FINAL ORDER**

EPA DOCKET NO. CAA-06-2020-3339

CONSENT AGREEMENT

The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”) and Sasol Chemicals (USA) LLC (“Respondent”) have agreed to simultaneously commence and 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 pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d), as amended, is simultaneously commenced and concluded by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3). Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.34.

3. For purposes of this proceeding, Respondent admits only the jurisdictional allegations of this CAFO; however, Respondent neither admits nor denies the specific factual or

legal allegations, or the conclusions of law, contained in this CAFO, and this CAFO shall not be used as evidence of any legal or factual admission by Respondent.

4. Respondent waives any right to contest the allegations in the CAFO and waives its right to appeal the Final Order set forth herein.

5. Respondent consents to the issuance of this CAFO and consents to the assessment and payment of the stated federal civil monetary penalty in the amount and by the method set out in this CAFO.

6. Compliance with all the terms and conditions of this CAFO shall resolve Respondent's liability for federal civil monetary penalties for the violations and facts alleged in the CAFO.

7. This CAFO may not be used in any federal or state proceeding except proceedings by EPA to enforce this CAFO.

8. Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this CAFO.

9. Respondent represents the undersigned representative is fully authorized by the party whom he or she represents to enter-into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind Respondent to the terms and conditions of this CAFO.

10. Respondent agrees the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

II. STATUTORY AND REGULATORY BACKGROUND

11. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), provides in pertinent part:

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and

correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

(B)(i) [. . .] the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operator of the sources of such releases.

(B)(ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection.

12. On June 20, 1996, EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

13. 40 C.F.R. Part 68 provides general requirements applicable to owners or operators of a stationary source subject to Part 68. It also establishes requirements that apply to an owner or operator based on whether the stationary source operates processes subject to one of three “Programs”—Program 1, Program 2, and Program 3.

14. Under 40 C.F.R. § 68.10(a), an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process (“Covered Process”), as determined under 40 C.F.R. § 68.115, shall comply with the requirements of 40 C.F.R. Part 68 no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under Section 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

15. Under 40 C.F.R. § 68.12(a), an owner or operator of a stationary source subject to Part 68 requirements must submit a Risk Management Plan (“RMP”) as provided in 40 C.F.R. Part 68 Subpart G (§§ 68.150-68.185) that reflects all covered processes at the stationary source.

16. Under 40 C.F.R. § 68.12(d), the owner or operator of a stationary source with a process subject to the “Program 3” requirements of the Part 68 regulations, as determined pursuant to 40 C.F.R. § 68.10(d), must do the following: develop and implement a management system as provided in 40 C.F.R. § 68.15; conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20–68.42; implement the prevention requirements of 40 C.F.R. §§ 68.65–68.87; develop and implement an emergency response program as provided in 40 C.F.R. §§ 68.90–68.95; and submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in 40 C.F.R. § 68.175.

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

18. “Process” is defined in 40 C.F.R. § 68.3 as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes 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.

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

20. “Regulated substance” is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to Section 112(r)(3) of the CAA as amended, in 40 C.F.R. § 68.130.

21. Risk Management Plan (“RMP”) is defined in 40 C.F.R. § 68.3 under subpart G of 40 C.F.R. Part 68.

22. “Stationary source” is defined in Section 112(r)(2)(C) of the CAA and 40 C.F.R. § 68.3 as 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, are under the control of the same person (or persons under common control), and from which an accidental release may occur.

23. “Threshold quantity” is defined in 40 C.F.R. § 68.3 as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA as amended, listed in 40 C.F.R. § 68.130, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

24. “Owner or operator” shall mean any person who owns, leases, operates, controls, or supervises a stationary source.

25. Under Sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA including, but not limited to, a requirement or prohibition of any rule promulgated under the CAA, other than those requirements specified in Sections 113(a)(1), 113(a)(2) or 113(d)(1)(A) of the CAA, 42 U.S.C. §§ 7413(a)(1), (a)(2), or (d)(1)(A), the Administrator may issue an order assessing a civil administrative penalty.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

26. Respondent is a limited liability company authorized to do business in the State of Louisiana.

27. Respondent is a “person” as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

28. At all times relevant to this CAFO, Respondent owned and operated a chemical manufacturing facility (“Facility”) located at 2201 Old Spanish Trail in Westlake, Louisiana 70669.

29. The Facility operates a chemical manufacturing process (NAICS Code 32511 – Petrochemical Manufacturing and 32619 - Other Plastics Product Manufacturing).

30. Respondent’s RMP lists covered processes subject to Program 3 requirements.

31. The regulated substances held above the threshold quantities identified in 40 C.F.R. § 68.130 include the following: 1-3-butadiene, isopentane, methane, ethylene, propylene, chlorine, 2-butene-cis, ethane, 2-butene-trans, 1-pentene, dimethyldichlorosilane, propadiene, butene, propane, ethylene oxide, hydrogen fluoride/ hydrofluoric acid, butane, pentane, 1-butene, 1,3-pentadiene, ethane, hydrogen, propyne, and isopentane.

32. As a facility with a Program 3 program, Respondent must: develop and implement a management system as provided in 40 C.F.R. § 68.15; conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20–68.42; implement the prevention requirements of 40 C.F.R. §§ 68.65–68.87; develop and implement an emergency response program as provided in 40 C.F.R. §§ 68.90–68.95; and submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in 40 C.F.R. § 68.175.

33. On July 23, 2019, Respondent’s Ethylene Operations were in the process of bringing ethane feed system (area 050) up to full operating pressure (700 psig). When the operating pressure reached 540 psig, the rubber seal on the ethane coalescer (D050-1005) failed resulting in an unignited release of 57,500 lbs of ethane to the atmosphere.

34. The direct causes leading to the accidental release include rubber seal failure due to improper installation; manufacturer's installation procedure was not followed or provided to the field execution group; and, integrity testing with service fluid (ethane) rather than inert fluid (nitrogen).

IV. ALLEGED VIOLATIONS

Count 1. Operating Procedures

35. Complainant hereby restates and incorporates by reference Paragraphs 1 through 34 above.

36. 40 C.F.R. § 68.69(a) requires the owner or operator to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each process consistent with the process safety information and shall address each phase of operation, including the initial startup. Respondent failed to develop or implement written operating procedures for integrity testing of the unit prior to initial startup.

37. Respondent failed to properly install the rubber seal per manufacturer's installation procedures.

38. Complainant alleges that Respondent's failures are a violation of 40 C.F.R. § 68.69(a).

V. TERMS OF SETTLEMENT

39. Section 113(d)(1) of CAA, 42 U.S.C. § 7413(d)(1), authorizes the Administrator to assess a penalty up to \$46,192 for each violation of any requirement of Section 112(r) of CAA, 42 U.S.C. § 7412(r).¹

¹ As adjusted by the 2018 Civil Monetary Penalty Inflation Adjustment Rule (83 Fed. Reg. 1190), 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$46,192 per day of violation for a violation occurring after November 2, 2015.

40. Upon consideration of the entire record herein, and upon consideration (in addition to such other factors as justice may require) of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation, the parties agree that thirty-eight thousand, and zero dollars (\$38,000.00) is an appropriate penalty to resolve this matter.

41. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the assessed civil penalty by cashier's check, certified 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 Service mail, to include certified mail; overnight mail; or wire transfer. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

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

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Note: Field Tag 4200 of the Fedwire message should read: "D 68010727
Environmental Protection Agency" with phone number (412) 234-4381.

PLEASE NOTE: The docket number CAA 06-2020-3339 shall be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following:

Justin McDowell
Enforcement Officer (6ECDAC)
Chemical Accident Enforcement Section
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

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. 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).

44. EPA will also assess a fifteen-dollar (\$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 fifteen dollars (\$15.00) for each subsequent thirty (30) day period 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. 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. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

45. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order, after the order or assessment has become final, the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621(a)(2) of title 26 from the date of the final order or decision or the date of the final

judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. 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 attorney's 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 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as the beginning of such quarter.

46. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of any equipment or technology installed by the Respondent in connection with any additional settlement terms undertaken pursuant to this CAFO. Nothing in this CAFO shall be construed to prohibit or prevent the federal, state, or local government from developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required.

47. This document constitutes a "Final Order" as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of "prior such violations."

VI. RETENTION OF ENFORCEMENT RIGHTS

48. EPA does not waive any rights or remedies available to EPA for any violations by Respondent of federal or state laws, regulations, statutes, or permitting programs, except for those matters resolved by this CAFO.

49. Nothing in this CAFO shall relieve Respondent of the duty to comply with all

applicable provisions of the CAA.

50. 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, or regulated or other extremely hazardous substances at, on, or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, or 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, regulations, or subparts thereof.

51. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits. The 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 Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of the CAA or with any other provisions of federal, state or local laws, regulations, or permits.

VII. COSTS

52. Each party shall bear its own costs and attorney's fees. Furthermore, the 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.

VIII. TERMINATION

53. This CAFO shall terminate upon Respondent's compliance with all requirements

of this CAFO.

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

FOR THE RESPONDENT:

Date: _____

Sasol Chemicals (USA) LLC

FOR THE COMPLAINANT:

Date: _____

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA Region 6

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 the Consent Agreement. 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 and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 7/11/2020

Thomas Rucki
Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2020, the original and one copy of the foregoing Consent Agreement and Final Order was electronically delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

VIA ELECTRONIC MAIL - RETURN RECEIPT REQUESTED:

Ms. Heather Kress, Esquire
Heather.Kress@us.sasol.com

Jeff Clay
Attorney
U.S. EPA Region 6, Dallas, Texas